

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**Forest Service**

**TIMBER SALE CONTRACT**  
**DIVISION BT**

July 2001  
(Date of Issue)

**STANDARD PROVISIONS FOR TIMBER SALES TO BE MEASURED BEFORE FELLING**

This Division is organized into Parts, Sections, Subsections, and Items. These are numbered in accordance with the following scheme: Part BT1.0, Section BT1.1, Subsection BT1.11, and Item BT1.111. References to a Part include all Sections, Subsections, and Items within that Part; references to a Section include all Subsections and Items within that Section; and references to a Subsection include all Items within that Subsection. Cross references within this contract cite the reference number of the applicable Division, Part, Section, Subsection, and Item. Descriptive headings used

are not to be considered in determining the rights and obligations of the parties hereunder.

The Standard Provisions in this Division are subject to Specific Conditions of the contract stated in Division AT. Wherever appropriate, Specific Conditions established in Division AT are herein cited by reference number. The listing of Sections, Subsections, or Items of this Division in AT24 has the effect of striking or deleting them from Division BT. AT25 lists Special Provisions that comprise Division CT. Where appropriate, references to Special Provisions are made by citing the applicable reference numbers.

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## **BT1.0—SALE AREA**

**BT1.1 Sale Area Map.** The boundaries of "Sale Area" and any Payment Unit thereof, are as shown on the attached "Sale Area Map" that is made a part hereof, and were, before timber sale advertisement, designated on the ground by Forest Service to meet the anticipated needs of the parties. The location of Sale Area and its approximate acreage are stated in AT1. Payment Units may be revised and additional ones may be established only by written agreement. Upon Purchaser's request, Forest Service shall subdivide Payment Units to reduce them to a size that can be logged within 60 days at Purchaser's normal rate of logging. However, the rate of logging used in such adjustment of Payment Unit size shall not be less than a rate necessary for removal of all Included Timber during Normal Operating Seasons prior to Termination Date. Payment Units may be eliminated from Sale Area under conditions described in BT6.36. Catastrophically Damaged areas may be removed from Sale Area under BT8.33.

Where applicable, the following are also identified on Sale Area Map:

- (a) Identified claims limiting Purchaser's rights under BT1.2;
- (b) Payment Units where timber is to be Measured or Marked after date of timber sale advertisement and approximate location of sample Marked timber under BT2.36 and BT2.4;
- (c) Boundaries of Clearcutting Units, Overstory Removal Units, and Understory Removal Units under BT2.3;
- (d) Areas where dead timber shall not be cut or shall be cut and removed under BT2.31;
- (e) Diameter limits for Overstory Removal Units and Understory Removal Units under BT2.33 and BT2.34;
- (f) Areas where leave trees are Marked to be left uncut under BT2.35;
- (g) Specified Roads listed in AT9;
- (h) Sources of base course, surface rock, and rock riprap listed in AT11;
- (i) Roads where log hauling is prohibited or restricted under BT5.12;
- (j) Roads and trails to be kept open under BT6.22;
- (k) Improvements to be protected under BT6.22;
- (l) Locations of known wildlife or plant habitat to be protected under BT6.25;
- (m) Locations of known cave resources to be protected under BT6.26;
- (n) Locations of areas known to be infested with specific noxious weeds under CT6.35;
- (o) Maximum stump heights when more than one height is listed by areas in AT8 under BT6.412;
- (p) Skidding or yarding methods specified under BT6.42;
- (q) Streamcourses to be protected under BT6.5;
- (r) Locations of meadows requiring protection under BT6.61;
- (s) Locations of wetlands requiring protection under BT6.62;

(t) Locations of temporary roads to be kept open under BT6.631; and

(u) Other features required by Division CT.

**BT1.2 Claims.** Valid claims are excluded from Sale Area, except those on which timber cutting is authorized in writing by the claimant and except mining claims on which cutting is authorized by the Act of July 23, 1955 (30 USC 614). Claims that limit Purchaser's rights to operate under this contract and that Forest Service has been able to identify are shown on Sale Area Map. Purchaser is not obligated to operate contrary to existing claim limitations. Forest Service shall designate boundaries of claims on the ground to the extent necessary to identify Included Timber.

## **BT2.0—TIMBER SPECIFICATIONS**

**BT2.1 Included Timber.** "Included Timber" consists of:

**BT2.11 Standard Timber.** Live and dead trees and portions thereof that meet Utilization Standards under BT2.2 and are designated for cutting under BT2.3.

**BT2.12 Substandard Timber.** Live and dead trees that:

- (a) Do not meet Utilization Standards and
- (b) Are located in Clearcutting Units or construction clearings or are otherwise designated for cutting.

### **BT2.13 Damaged Timber.**

**BT2.131 Damaged by Purchaser.** Undesignated live trees meeting Utilization Standards:

(a) Within 200 feet slope distance from centerline of roads constructed hereunder that are damaged by Purchaser's construction to the extent that considerable deterioration or mortality is imminent and are designated by Forest Service for felling before the nearest road segment is Substantially Completed or

(b) That are damaged by Purchaser in logging and are subsequently Marked before Purchaser has completed skidding or yarding operations in the immediate area.

By agreement, such trees may be left without charge if their removal would cause undue damage or be grossly uneconomic.

**BT2.132 Negligent or Willful Damage.** Undesignated timber meeting Utilization Standards and unnecessarily damaged or negligently or willfully cut by Purchaser, if included by Contracting Officer.

**BT2.133 Damage by Catastrophe.** As provided under BT8.33, undesignated live and dead timber within Sale Area, meeting Utilization Standards, and affected by Catastrophic Damage. "Catastrophic Damage" as used hereunder is major change or damage to Included Timber on Sale Area, to Sale Area, to access to Sale Area, or a combination thereof:

(a) Caused by forces, or a combination of forces, beyond control of Purchaser, occurring within a 12-month period, including, but not limited to, wind, flood, earthquake, landslide, fire, forest pest epidemic, or other major natural phenomenon and

(b) Affecting the value of any trees or products meeting Utilization Standards, within Sale Area and estimated to total either:

(i) More than half of the estimated timber quantity stated in AT2 or

(ii) More than two hundred thousand cubic feet (2,000 CCF) or equivalent.

Catastrophic Damage does not include changes caused by forest pest epidemics if Included Timber was sold for salvage or pest control.

**BT2.134 Minor Damage by Natural Causes.** Undesignated trees within Sale Area and meeting Utilization Standards, in amounts less than specified in BT2.133, that become insect infested, windthrown, suffer serious damage, or die, as designated by agreement.

**BT2.14 Unintentionally Cut Timber.** Live trees, within or immediately adjacent to Sale Area or to road construction or other authorized clearing outside Sale Area, not designated for cutting under BT2.3 but that are cut through mistake by Purchaser, when included by Contracting Officer.

**BT2.15 Construction Timber.** Live trees to be used for construction under BT5.1.

**BT2.16 Other Material.** Species or products not listed in AT2, upon written approval of Contracting Officer under BT3.41.

**BT2.2 Utilization and Removal of Included Timber.** "Utilization Standards" for trees and minimum pieces are stated in AT2. To meet minimum tree specifications, trees must equal or exceed tree diameters listed in AT2 and contain at least one minimum piece. Except for timber required or authorized to be left, Purchaser shall fell and buck such trees and shall remove from Sale Area all pieces that:

(a) Meet minimum piece standards in AT2 or

(b) Do not meet such standards, but would have qualified as part of minimum pieces if bucking lengths were varied to include such material.

**BT2.3 Timber Designations.** Timber designated for cutting shall be confined to Sale Area, except as provided in BT2.131, BT2.14, BT2.15, BT2.32, and BT5.1. Sale Area Map indicates Payment Units, if any, where Marking under BT2.35 is to be done after timber sale advertisement, except for construction clearing under BT2.32, designation changes under BT2.37, and damaged timber.

The boundaries of "Clearcutting Units," "Overstory Removal Units," and "Understory Removal Units" were plainly Marked on ground before timber sale advertisement and are shown on Sale Area Map. Such units where Measuring is to be completed after date of timber sale advertisement are also shown. The number of units and approximate acreage of timber designations are stated in AT3.

**BT2.31 Clearcutting Units.** All live and dead trees that meet minimum tree diameter specifications in AT2 within Clearcutting Units are designated for cutting.

Dead trees located outside Clearcutting Units and within 200 feet slope distance of any live tree required to be cut within a Clearcutting Unit are designated for felling when they:

(a) Meet the size requirements and number limitations stated in AT4 and

(b) Are not in an area shown on Sale Area Map where such trees are to be left standing to protect soil, water, wildlife, or residual trees.

Dead timber meeting Utilization Standards adjacent to Clearcutting Units shall be removed where indicated on Sale Area Map. Optional dead timber quantities are not included in AT2 or AT5c.

**BT2.32 Construction Clearing.** All timber is designated for cutting that is within the clearing limits of roads constructed hereunder or is in other authorized clearings. All dead trees are designated for cutting that are sufficiently tall to reach Purchaser's landings or the roadbed of Specified Roads. Other fire-dangerous dead trees or unstable live trees within 200 feet slope distance of the centerline of Specified Roads shall be felled by Purchaser when Marked in advance of felling of timber in the immediate vicinity. Pieces meeting Utilization Standards from such dead or unstable live trees shall be removed, unless there is agreement that to do so could damage the road. Such designation may be revised as part of agreed changes in road location under BT5.2. All dead trees to be felled outside construction clearing limits are subject to the size requirements and number limitations of AT4.

**BT2.321 Specified Road Clearings.** Timber within the clearing limits of Specified Roads is within separate Payment Units, as shown on Sale Area Map, and the quantities are in AT2. These Payment Units are subject to revision, as specified in BT2.37. The quantities of dead, fire-dangerous, and unstable trees designated outside the clearing limits are not included in AT2.

**BT2.322 Other Authorized Clearings.** Timber within authorized clearings for Temporary Roads, landings, or other construction clearings is designated for cutting. Quantities of such timber are not included in AT2.

**BT2.33 Overstory Removal Units.** Live trees within Overstory Removal Units are designated for cutting when they meet Utilization Standards and equal or exceed the d.b.h. limits shown on Sale Area Map. The following trees are also designated for cutting if located within such units and within 200 feet slope distance of any live tree required to be cut:

(a) Any trees windthrown prior to Purchaser's logging in the immediate vicinity that meet Utilization Standards in amounts less than specified in BT2.133 and

(b) Any dead trees meeting the size requirements and number limitations of AT4.

**BT2.34 Understory Removal Units.** Live trees within Understory Removal Units are designated for cutting when they meet Utilization Standards and are smaller than the d.b.h. limits shown on Sale Area Map. The following trees are also designated for cutting if located within such units and within 200 feet slope distance of any live tree required to be cut:

(a) Any trees windthrown prior to Purchaser's logging in the immediate vicinity that meet Utilization Standards in amounts less than specified in BT2.133 and

(b) Any dead trees meeting the size requirements and number limitations of AT4.

**BT2.35 Individual Trees.** Trees are "Marked" when individually designated by Forest Service with paint marks above and below stump height. Live trees to be cut, other than in the units described in BT2.31, BT2.32, BT2.33, and BT2.34, are or shall be Marked. The following trees are also designated for cutting within 200 feet slope distance of any live tree required to be cut:

(a) Any trees windthrown prior to Purchaser's logging in the immediate vicinity that meet Utilization Standards in amounts less than specified in BT2.133 and

(b) Any dead trees meeting the size requirements and number limitations of AT4, unless Forest Service gives notice otherwise.

Sale Area Map indicates areas plainly identified on the ground where leave trees are Marked to be left uncut.

**BT2.36 Incompletely Measured Payment Units.** Live trees within incompletely Measured Payment Units shown on Sale Area Map at time of timber sale advertisement shall be designated in accordance with CT2.36. A representative sample of the timber to be designated has been Marked prior to timber sale advertisement in accordance with such rules. The approximate locations of the representative sample areas are shown on Sale Area Map.

**BT2.37 Designation Changes.** Within Sale Area, minor adjustments may be made in boundaries of cutting units or in the timber individually Marked for cutting when acceptable to Purchaser and Forest Service.

In event Contracting Officer accepts alternate facilities under BT5.26, Contracting Officer shall revise the affected Payment Units and adjust estimated quantities.

In the event Purchaser does not construct portions of Specified Roads, Payment Units involved shall be revised to eliminate the road portions not to be constructed. Parts of such areas within non-road-related Payment Units shall be added to such Payment Units and the timber thereon shall be designated by the methods provided for said Payment Units. Estimated quantities for Payment Units so revised shall be adjusted as necessary.

**BT2.4 Quantity Estimate.** The estimated quantities of timber by species designated for cutting under BT2.3 and expected to be cut under Utilization Standards are listed in AT2. Estimated quantity in AT2 does not include the following:

(a) Damaged timber under BT2.13;

(b) Unintentionally cut timber under BT2.14;

(c) Construction timber under BT2.15 cut outside of Payment Units and removed from construction use for utilization by Purchaser;

(d) Dead timber adjacent to Clearcutting Units and removed at option of Purchaser under BT2.31;

(e) Timber within clearing limits of Temporary Roads or other authorized clearings and that is not designated under BT2.31, BT2.33, BT2.34, or BT2.35;

(f) Fire-dangerous dead trees or unstable live trees within 200 feet slope distance of Specified Roads; or

(g) Trees windthrown prior to Purchaser's logging in immediate vicinity.

Estimated quantities for such timber not included in AT2 shall be determined as stated in CT6.8.

If Sale Area Map shows Payment Units where Marking or Measuring is to be completed after date of timber sale advertisement, the objective of Forest Service shall be to designate for cutting in such Payment Units sufficient timber so that Sale Area shall yield the approximate estimated quantities by species or species groups stated in AT2. However, the estimated quantities stated in AT2 are not to be construed as guarantees or limitations of the timber quantities to be designated for cutting under the terms of this contract.

Quantity adjustments shall not be made under this Section after there is modification for Catastrophic Damage under BT8.33.

**BT2.41 Adjustment for Quantity Deficit.** If the Sale Area Map shows Payment Units where Marking or Measuring is to be completed after the date of timber sale advertisement and if a deficit in the estimated quantity will cause the quantity designated to be less than 90 percent of the total estimate shown in AT2, Forest Service, upon request by Purchaser, shall designate additional timber within Sale Area. Such additional timber shall be limited to that estimated to be necessary to reach approximately the estimated quantities by species listed in AT2. Any such additional designation shall be consistent with land and resource management plans.

**BT2.42 Adjustment for Excess Quantity.** If Sale Area Map shows Payment Units where Marking or Measuring is to be completed after date of timber sale advertisement and if there is a determination that the quantity designated will be more than 120 percent of the total estimated quantity listed in AT2, Forest Service, upon request by Purchaser, shall make an adjustment in Marking or cutting unit boundaries with the objective of designating for cutting the approximate estimated quantities by species listed in AT2. Such adjustments in quantities shall be confined to (a) Marking adjustments on Sale Area and (b) reduction in area to be cut over. Such adjustments or reductions shall not conflict with the silvicultural treatment being applied on Sale Area and shall not materially change the average value by species of the timber designated for cutting. Such adjustments may be made notwithstanding the provisions of BT1.1 and BT2.3.

If the timber designated for cutting is not satisfactorily reduced by such adjustments, Purchaser, after cutting 120 percent of the total estimated quantity listed in AT2, may elect to have Sale Area reduced to eliminate Payment Units where felling has not begun.

### **BT3.0—RATES OF PAYMENT**

**BT3.1 Current Contract Rates.** Included Timber that is Released for Cutting shall be paid for at Current Contract Rates determined under this Section. "Current Contract Rates" shall be (a) Flat Rates and (b) Tentative Rates adjusted by the escalation procedures in BT3.2. Said Flat Rates and Tentative Rates shall be those listed in AT5, unless superseded by rates redetermined under BT3.3 or established for Contract Term Extension under BT8.23.

Current Contract Rates, based on rates redetermined under BT3.3 or established under BT8.23, shall apply to

all Payment Units from which removal of timber from Sale Area has not been completed on the effective date of the revised rates, except Current Contract Rates in effect at the time of Release for Cutting shall be applicable:

(a) On Payment Units for Specified Roads Released for Cutting on which clearing has begun and

(b) For not more than two other Payment Units from which removal from Sale Area has begun.

Notwithstanding the exceptions provided in this Section, rates redetermined under BT3.33 after Catastrophic Damage shall apply to all Included Timber retained or added by agreement under BT8.33.

In event there are more than two Payment Units from which timber removal has not been completed on the effective date, the rates in effect at the time of Release for Cutting shall apply to the two units from which the greatest estimated proportions of Payment Unit quantities have been removed. Otherwise, in released Payment Units, redetermined rates or rates established for Contract Term Extension shall apply to the entire quantity shown in AT5c for those units. In addition, Required Deposits shall be made as listed in AT5 and CT5.32, or established under BT3.3 or BT8.23.

In the event Termination Date is adjusted under BT8.21 or BT8.212, Current Contract Rates shall be continued in the same manner as immediately prior to the adjustment period.

"Current Contract Value" is the sum of the products of Current Contract Rates and estimated remaining quantities by species of Included Timber meeting Utilization Standards.

**BT3.2 Escalation Procedure.** Tentative Rates for those species and products listed in AT5a are subject to quarterly escalation in accordance with the following procedures: The calendar quarter index average for each price index described in AT6 is the arithmetic average of the three such monthly price indices preceding January 1, April 1, July 1, and October 1. The difference between said calendar quarter index average and Base Index listed in AT5a shall be the basis for quarterly escalation. To arrive at Current Contract Rates for Payment Units Released for Cutting during the preceding calendar quarter, Tentative Rates for each species shall be reduced or increased by such difference, except when the calendar quarter index average is:

(a) Less than the Base Index, the reduction shall not result in a rate below Base Rate or

(b) Greater than the Base Index, the increase shall not exceed the difference between Tentative Rate and Base Rate.

In the event of Contract Term Extension under BT8.23, the escalation procedure will be used during the extension period, except that adjusted payment rates for any calendar quarter cannot be less than Tentative Rates, for each species and product group, established under BT8.23 for the extension period.

**BT3.21 Unavailable Index.** If an index described in AT6 is no longer available, Contracting Officer may replace that index. If Contracting Officer determines that a replacement index does not exist, Current Contract Rates

for the remainder of the timber sale shall be a Flat Rate. Said Flat Rate will be Tentative Rates adjusted by the arithmetic average of the index described in AT6 for a 12-month period prior to its becoming unavailable using the quarterly adjustment procedure outlined in BT3.2. Contracting Officer will determine availability and a beginning point to average the index for Flat Rates. Such Flat Rates are subject to rate redetermination as provided elsewhere under this contract.

**BT3.3 Rate Redetermination.** Rates may be redetermined as set forth in this Section. Bid Premium Rates shall be added to all redetermined rates.

**BT3.31 Scheduled Rate Redetermination.** Contracting Officer shall redetermine rates for timber described at AT7 to be made effective on the date listed in AT7. Said redetermined rates shall be used under BT3.1 for determination of Current Contract Rates. The date for putting the redetermined rates into effect may be adjusted under BT8.21 or BT8.212. However, if rates established by a scheduled rate redetermination result in lower than Current Contract Rates determined from Bid Rates and Base Indices stated in AT5, such lower rates shall become effective only after at least the quantity stated in AT7 has been paid for and Released for Cutting. Contracting Officer may make changes in contractual requirements at the time of scheduled rate redetermination pursuant to BT8.31.

Scheduled rate redeterminations under AT7 to be made within 5 years of award date shall be made by use of a limited procedure. In accordance with standard methods established by Forest Service for such limited rate redetermination procedure, the appraisal used to develop Advertised Rates described in AT5 shall be brought up to date by use of product selling values, operating costs, and development costs in effect 45 days prior to rate redetermination date.

All other rate redeterminations shall be made in accordance with the standard Forest Service methods in effect 45 days prior to rate redetermination. Such methods shall take into consideration all factors that may affect timber value at said rate redetermination date.

Redetermined rates shall not be less than Base Rates listed in AT5. Base Indices and Required Deposits, when applicable, shall be redetermined. Redetermined rates shall be established without cost estimated for construction of Specified Roads needed by Purchaser under BT5.2, except that at the time of each rate redetermination, Contracting Officer shall redetermine cost of such Specified Roads not yet constructed. Such redetermined costs shall be recorded as provided in BT5.24 and BT5.25, and shall establish the redetermined Specified Road construction cost, subject to the limitations of BT5.26.

**BT3.32 Rate Redetermination for Environmental Modification.** In the event of a contract modification under BT8.3 that is necessary to implement Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 USC 1601 (note)), Contracting Officer shall make an appraisal to determine for each species the difference between the appraised unit value

of Included Timber remaining immediately prior to the revision and the appraised unit value of timber to be cut under the modification. The appraisal shall consider the estimated cost of any construction work listed in AT10 that was performed and abandoned.

Flat Rates in effect at the time of the revision shall be adjusted by said differences to become the redetermined rates for the purpose of a contract modification under BT8.3.

Tentative Rates, as adjusted pursuant to BT3.2, will be adjusted by said differences to become Current Contract Rates under BT3.1.

Redetermined rates, or said differences for rates subject to BT3.2, and Required Deposits shall be considered established under BT3.1 for timber Released for Cutting subsequent to the contract revision and prior to any subsequent scheduled rate redetermination.

**BT3.33 Rate Redetermination After Catastrophic Damage.** In event of Catastrophic Damage and adjustment, if any, of Included Timber, Contracting Officer shall make an appraisal to determine for each species the catastrophe-caused difference between the appraised unit value of Included Timber remaining immediately prior to the catastrophe and the appraised unit value of existing and potential Included Timber immediately after the catastrophe. Said Included Timber is any that would not be eliminated under BT8.33. Said potential Included Timber is any that would be added under BT8.33.

Tentative Rates and Flat Rates in effect at the time of catastrophe shall be adjusted by said differences to become the redetermined rates for the purpose of a contract modification under BT8.33. Accordingly, Base Rates shall be adjusted to correspond to the redetermined rates if redetermined rates are less than the original Base Rates, subject to new Base Rate limitations of 25 cents per hundred cubic feet or equivalent. However, existing Base Indices shall not be changed under this Subsection. Upon agreement under BT8.33, redetermined rates and Required Deposits shall be considered established under BT3.1 for Included Timber removed subsequent to Catastrophic Damage and prior to any subsequent scheduled rate redetermination.

At time of such appraisal, Specified Road construction cost shall be revised pursuant to BT5.25 to meet the new conditions and include the estimated cost of any construction work listed in AT10 performed and abandoned.

#### **BT3.4 Other Payment Rates.**

**BT3.41 Material and Quantities Not in AT2.** Incidental amounts of products or portions of trees of species listed in AT2 that do not meet Utilization Standards may be removed without charge. Such material from Clearcutting Units and construction clearings may be purposely removed in more than incidental amounts without charge subject to agreement on deposits for road maintenance and use. Such material from other than Clearcutting Units and construction clearings may be purposely removed in more than incidental amounts without charge upon written approval of Contracting Officer, and subject

to agreement on deposits if needed for road maintenance and use.

Other species or products not listed in AT2 may, upon written approval of Contracting Officer, be cut and removed without charge other than Required Deposits established by agreement.

Timber for which the quantity is not included in the estimate listed in AT2, as described in BT2.4, shall be paid for at Current Contract Rates and Required Deposits.

**BT3.42 Timber Cut Through Mistake.** Undesignated timber meeting Utilization Standards, cut by Purchaser through mistake and included by Contracting Officer under BT2.14, shall be removed and paid for at Current Contract Rates and Required Deposits, unless such material is not listed in AT2. In such event, Contracting Officer, in accord with standard Forest Service methods, shall establish rates to be paid.

**BT3.43 Undesignated Timber Damaged Without Negligence.** Undesignated timber meeting Utilization Standards, damaged without negligence by Purchaser and designated by Forest Service under BT2.131, shall be cut, removed, and paid for at Current Contract Rates and Required Deposits.

**BT3.44 Undesignated Timber Unnecessarily Damaged or Negligently or Willfully Cut.** Undesignated timber meeting Utilization Standards and unnecessarily damaged or negligently or willfully cut by Purchaser, if included by Contracting Officer under BT2.132, shall be cut, removed, and paid for at Current Contract Rates and Required Deposits that are in addition to liquidated damages under BT3.45.

If such timber is of a species or size not listed in AT2 or is of a quality different from designated timber, Contracting Officer shall establish payment rates in accord with standard Forest Service methods.

**BT3.45 Liquidated Damages.** Unnecessary damage to or negligent or willful cutting of undesignated timber, as described in BT3.44, on portions of Sale Area cut over under this contract is likely to cause substantial silvicultural or other damage to the National Forest. It will be difficult, if not impossible, to determine the amount of such damage. Therefore, Purchaser shall pay as fixed, agreed, and liquidated damages an amount equivalent to, and in addition to, the amount payable at Current Contract Rates for such timber. If designated, Purchaser shall remove such damaged or cut timber.

#### **BT4.0—PAYMENTS**

**BT4.1 Amount Payable for Timber.** Except as provided in BT3.1, Current Contract Rates and Required Deposits in effect when a Payment Unit is Released for Cutting shall be applied to the timber quantities to determine the amount Purchaser shall pay. A "Payment Unit" is a portion of Sale Area established for payment purposes.

**BT4.11 Adjustment of Quantity.** An estimated quantity shown in AT2 shall be revised by correcting identified errors made in determining estimated quantity that result in a change in total timber sale quantity of at least 10 percent or \$1,000 in value, whichever is less, when an



incorrect estimated quantity is caused by computer malfunction or an error in calculations, area determination, or computer input.

No adjustments in quantity shall be made for variations in accuracy resulting from planned sampling and Measuring methods or judgments of timber quality or defect.

For payment purposes, corresponding revisions in quantity and total payment shall be shown in AT5c for each Payment Unit involved. Adjustment in rates will not be made. Adjustment in quantities shall not obligate Forest Service to designate additional quantities when the original quantity estimate is overstated, nor shall the provisions of BT2.41 and BT2.42 apply for changes in quantity, unless Sale Area Map shows Payment Units where Marking or Measuring is to be completed after date of timber sale advertisement.

**BT4.2 Timber Sale Account.** The "Timber Sale Account" is an account of all Purchaser's deposits, credits, payment guarantees, and the charges for:

- (a) Timber at Current Contract Rates,
- (b) Slash disposal and road maintenance at Required Deposit rates,
- (c) Cooperative work at rates established by specific agreement under BT4.228, and
- (d) Other charges provided in this contract.

Cash deposits and transferred-in purchaser credit, as provided in BT4.21, shall be recorded currently in such account.

Charges for Payment Units Released for Cutting shall be made when Forest Service prepares and furnishes to Purchaser periodic statements of quantity and value of such timber. Charges subject to escalation under BT3.2 shall be made initially on the basis stated in BT4.224 and shall be adjusted at the end of each calendar quarter, as provided in BT3.2. Charges against transferred-in purchaser credit shall be limited to timber value in excess of Base Rates.

Charges shall be made according to BT3.4 when trees are subsequently Marked or designated for cutting.

**BT4.21 Transfer of Purchaser Credit.** The amount of purchaser credit that may be transferred into this contract is limited to the amount shown in AT22. This limit may be adjusted pursuant to BT8.3. Any such adjustment shall be calculated in a manner consistent with the limit computation when the timber sale was sold.

Purchaser credit transferred to this contract from other contracts may be used to meet charges for timber subject to BT4.2. Transfer of purchaser credit to or from the Timber Sale Account shall be made monthly or at longer intervals, as requested by Purchaser.

Transferred-in purchaser credit shall be considered equivalent to cash for advance deposits, notwithstanding the BT4.2 prohibition on using transferred-in purchaser credit for Base Rate charges.

**BT4.22 Cash Deposits.** Within the limitations of this Subsection, Purchaser shall make cash deposits to meet Purchaser's obligations within 15 days of billing by Forest Service. Said deposits shall be made to Forest Service, U.S.D.A., by mail or delivery at address to be

furnished by Forest Service. An explanation of billings shall be issued at the time of each request for such deposits.

**BT4.221 Downpayment.** Notwithstanding BT4.22, Purchaser shall make, at the location designated by Forest Service, a downpayment in the amount shown in AT20 in cash or by application of purchaser credit transferred to this timber sale at the time this contract is executed. Limits established pursuant to BT4.21 apply.

Purchaser's failure to make the downpayment in conformance with the terms, conditions, and requirements contained in Contracting Officer's letter of award shall constitute repudiation of Purchaser's bid pursuant to BT9.41 and will be a breach of this contract pursuant to BT9.3. Purchaser shall have 3 days from the required date of execution to make the downpayment at the location designated by Forest Service. The notice requirements and the time periods for remedy stated in BT9.3 do not apply.

Purchaser shall pay interest on the unpaid downpayment for the period within the 3 days in which the downpayment is late. The rate of interest is stated in AT20. In the event Purchaser fails to make payment within the 3 days, Purchaser's bid guarantee shall be retained by Forest Service and applied toward damages.

Damages shall be determined pursuant to BT9.41. If the amount of the bid guarantee exceeds the amount of damages, the balance will be refunded to Purchaser.

The downpayment may not be applied toward any other payment required under the provisions of this contract, except damages determined pursuant to BT9.4, transferred to other timber sales, or refunded until stumpage value representing 25 percent of the total bid value of the timber sale is shown on the Timber Sale Account to have been cut, removed, and paid for, or if 36 CFR 223.49(e) is applicable, the estimated value remaining to be cut and removed, as shown on the Timber Sale Account, is equal to or less than amount of the downpayment. For lump sum timber sales, the downpayment may be applied to payment for release of the single payment unit (36 CFR 223.49(d)).

If a subsequent final determination is made that this contract should not have been included under increased downpayment requirements (36 CFR 223.49(e)), the downpayment shall be revised and applied in accordance with 36 CFR 223.49(f).

**BT4.222 Advance Deposits.** Purchaser agrees to make cash deposits or transfer purchaser credit to this timber sale in advance of cutting to meet charges under BT4.2.

Forest Service billings for advance cash deposits shall be in such amounts that, together with transferred-in purchaser credit as described in BT4.21, the Timber Sale Account will maintain an unobligated balance that covers the applicable charges for Payment Units Released for Cutting and designated material not included in AT2 expected to be cut within the next 60 days. This advance cash deposit may be reduced to a smaller amount by the terms of BT4.221, BT4.223, BT4.225, and/or BT4.227. Except for amounts required pursuant to BT4.221,

BT4.223, and BT4.227, Purchaser shall not be required to make advance deposits above those required under this Item.

When the credit balance in the Timber Sale Account is exceeded by the charges for timber within Payment Units Released for Cutting and for the estimated quantity to be cut in 10 days of cutting designated material not included in AT2, Contracting Officer will suspend all or any part of Purchaser's Operations until payment or acceptable payment guarantee is received.

**BT4.223 Periodic Payment Schedule.** Purchaser shall make periodic payments for stumpage value, as shown in AT21.

In the event Purchaser has not paid the amount(s) stated in AT21 as stumpage for quantity removed by the periodic payment determination date(s), Forest Service shall issue a bill for collection for the difference between the required amount and payments made by Purchaser. If payment(s) fall due on a date other than a normal billing date, the payment date shall be extended to coincide with the next Timber Sale Account billing date.

The amount of the periodic payment(s) will be reduced if the payment(s) would result in Purchaser's credit balance for timber charges exceeding the Current Contract Value.

Only cash or transferred-in purchaser credit may be used for this purpose. No other form of payment is acceptable. Such cash will be used to meet subsequent charges on this timber sale under the terms of BT4.222. Transferred-in purchaser credit used to meet this obligation cannot be transferred to another timber sale unless replaced by cash.

Periodic payment determination date(s) that have not been reached shall be adjusted when a Contract Term Adjustment under BT8.21 or a market-related contract term addition under BT8.212 is granted. When a contract is lengthened as a result of market-related contract term additions any subsequent periodic payment determination date(s) shall be delayed 1 month for each month added to the contract's term. Periodic payment determination date(s) will not be adjusted when a Contract Term Extension is granted under BT8.23.

**BT4.224 Deposits for Charges Subject to Escalation.** Cash deposits requested to cover estimated charges for timber subject to escalation under BT3.2 shall be based upon Current Contract Rates and related deposits in effect during previous calendar quarter, except when the most recent applicable monthly index differs from the previous quarterly index average by more than five (5) percent. In such event, request for said deposits shall be based on a rate adjustment of half of such difference, rounded to the nearest 10 cents.

**BT4.225 Deposits When Payment Guaranteed.** To the extent payment guarantee is provided under BT4.3, requirements for advance cash deposits under BT4.222 shall be waived for the value of timber on Sale Area that has been Released for Cutting, but not removed, and for the estimated value of products removed from Sale Area for not more than a monthly billing period, subject to the provisions of BT4.4.

**BT4.226 Blanket Cash Deposits.** Purchaser may make cash deposits under a written agreement to cover charges made under this and other timber sale contracts within the same National Forest. Forest Service shall allocate such deposits to such timber sales. When there is to be no timber cutting hereunder for 30 days or more and payment of current charges has been made, the allocation to this timber sale shall be reallocated to other timber sales at Purchaser's request. Purchaser shall not start cutting hereunder until allocation has again been made to this timber sale.

**BT4.227 Extension Deposits.** In the event of Contract Term Extension under BT8.23, Forest Service shall divide the difference between Current Contract Value as of the start of any Contract Term Extension and the credit balance of any deposit made pursuant to BT4.223 by the number of whole months remaining in Normal Operating Season(s) within the extension period to determine the amount of each "Extension Deposit."

Purchaser shall make the initial Extension Deposit prior to Forest Service executing the contract modification. In response to Forest Service billing under BT4.22, Purchaser shall make advance cash deposits. Such deposits, together with transferred-in purchaser credit, shall at least equal each Extension Deposit required for each whole month remaining in Normal Operating Season(s) during the extension period. Said deposits shall be due by the last day of each month during Normal Operating Season whether or not any Payment Unit is to be released.

Due dates for Extension Deposits during the extension period may be delayed when Purchaser earns Contract Term Adjustment pursuant to BT8.21 if the Termination Date, as adjusted, results in one or more additional complete months within Normal Operating Season(s).

**BT4.228 Cooperative Deposits.** On a basis of cooperation or assistance (16 USC 572) and by a written agreement, Forest Service shall perform all or portions of the work that Purchaser is obligated to perform under this contract, as well as furnish other services in connection with activities under this contract. When Forest Service is to perform such work, Purchaser shall make one or more deposits to cover the estimated cost of said work. On request of Purchaser, Forest Service shall render monthly accounts, as may be specified in such agreement.

**BT4.23 Temporary Reduction of Downpayment.** When, under BT6.02, Contracting Officer requests Purchaser to interrupt or delay Purchaser's Operations for more than 60 days, the downpayment amount being held on deposit may be temporarily reduced upon the written request of Purchaser or at the discretion of Contracting Officer. For the period of the interruption or delay, the downpayment on deposit may be reduced to \$1,000 or two (2) percent of the downpayment amount listed in AT20, whichever is larger.

Purchaser agrees that when the downpayment amount is reduced that Purchaser shall remit, release, and forever discharge the United States from any and all Claims arising from the downpayment deposit under this contract, including, but not limited to, any Claims of inter-

est or other costs. With the exception that Out-of-Pocket Expenses relating to the downpayment, incurred as a direct result of interruption or delay of operations, are paid when such interruption or delay exceeds 30 days and are calculated up to the point the downpayment is returned to Purchaser. Purchaser agrees to provide receipts or other documentation to Contracting Officer that clearly identify and verify actual expenditures.

Any downpayment amount temporarily reduced pursuant to this Subsection may be refunded or transferred at the request of Purchaser. However, if Purchaser has outstanding debt owing the United States, Contracting Officer must apply the amount of downpayment that could be refunded to the debt owed in accordance with the Debt Collection Improvement Act, as amended (31 USC 3701, *et seq.*). If the downpayment is being covered by transferred-in purchaser credit, Contracting Officer may transfer the credit released to other timber sales pursuant to BT4.21.

Upon Purchaser's receipt of bill for collection and written notice from Contracting Officer that the basis for the interruption or delay no longer exists, Purchaser shall restore the downpayment to the full amount shown in AT20 within 15 days after the date the bill for collection is issued. Purchaser shall not resume contract operations until the downpayment amount is fully restored. Purchaser's failure to fully restore the downpayment amount within 15 days after the date the bill for collection is issued is a breach of contract pursuant to BT9.3. Purchaser shall have 30 days to remedy the breach or the contract will be terminated.

Pursuant to the Debt Collection Improvement Act, as amended, if payment restoring the full amount of the downpayment is not received by Forest Service within 15 days after the date the bill for collection is issued, Forest Service shall charge Purchaser interest, administrative charges, and a penalty charge, in addition to the delinquent amount due, at the rates and amounts described in BT4.4.

**BT4.24 Refund of Excess Cash.** If at any time the credit balance of the Timber Sale Account exceeds the charges for timber within Payment Units Released for Cutting and for designated material not included in AT2 that Forest Service estimates will be cut within the next 60 days, any portion of such excess that is due to cash in the account shall be refunded, if requested by Purchaser, unless deposited under BT4.221, BT4.223, or BT4.227. If no cutting is planned within the next 60 days, refund of the entire unencumbered cash balance, except as provided in this Subsection, may be made. However, said credit balance shall not be reduced below the total value of partially cut Payment Units and designated material not included in AT2 that is cut before operations cease. After a refund for a shutdown, deposits shall be made to meet the requirements of BT4.222 before additional timber may be cut.

**BT4.25 Refund After Final Charges for Released Timber.** Any cash deposit, in excess of that required to meet charges under BT4.2, shall be refunded or transferred within 15 days of Purchaser's request after fi-

nal charges for Included Timber have been made, except for amounts estimated to be required under BT9.5.

**BT4.3 Payment Guaranteed by Bond or Deposited Securities.** To guarantee payment, Purchaser may furnish and maintain an acceptable surety bond or deposit in a Federal Depository negotiable securities of the United States. The securities shall be deposited through the Regional Fiscal Agent accompanied by a power of attorney and agreement authorizing the bond-approving officer to sell or collect such securities if payment is not made within 15 days of billing by Forest Service. The penal sum of such surety bond or the market value at time of deposit of such negotiable securities shall be the maximum amount of the payment guaranteed.

For payment purposes, said penal sum of the surety bond or market value at time of deposit of negotiable securities shall be in lieu of the performance bond furnished under BT9.1.

**BT4.31 Blanket Bond.** If Purchaser furnishes an acceptable bond, or deposits securities, in accordance with BT4.3, to guarantee payment for timber from this and other timber sales within the same National Forest, the amount of such bond or deposited securities shall be allocated to such timber sales by Forest Service. When there is to be no timber cutting hereunder for 30 days or more and payment of current charges has been made, the allocation to this timber sale shall be reallocated to other timber sales at Purchaser's request. Purchaser shall not start cutting hereunder until this timber sale receives an allocation that will, in combination with transferred-in purchaser credit, meet the obligation for payment guarantee.

**BT4.32 Letters of Credit for Payment Bond.** Notwithstanding the provisions of BT4.3, approved letters of credit may be used in lieu of a surety bond for payment bond purposes. Such letters of credit shall be subject to approval by Contracting Officer.

**BT4.4 Payments Not Received.** (a) Payments are due and payable on the date of issue, as indicated on the bill for collection. When a payment for timber cut and other charges is not received at the location designated by Forest Service by the date allowed for receipt of payment, as indicated on the bill for collection, Contracting Officer will suspend all or any part of Purchaser's Operations until payment or acceptable payment guarantee is received. Other charges include, but are not limited to:

- (i) Slash disposal and road maintenance deposits;
- (ii) Cooperative work at rates established by specific agreement under BT4.228;
- (iii) Surface rock replacement;
- (iv) Damages pursuant to BT9.4;
- (v) Road use fees;
- (vi) Restoration of downpayment pursuant to BT4.23;
- (vii) Periodic payments pursuant to BT4.223;
- (viii) Extension Deposits pursuant to BT4.227; and
- (ix) Other mandatory deposits.

(b) Failure to pay amounts due by the date allowed for receipt of payment, as indicated on the bill for collec-

tion, shall be considered a breach under BT9.3. The 30 day notice period prescribed therein shall begin to run as of the end of business on the date allowed for receipt of payment, as indicated on the bill for collection. If the performance or payment is guaranteed by surety bond, the surety will receive a copy of the written notification of breach. Ten days after issuance of written notification of the breach, demand will be made on the surety or other institution providing the guarantee or bond instrument for immediate payment.

(c) Pursuant to the Debt Collection Improvement Act, as amended (31 USC 3701, *et seq.*), if payment is not received by Forest Service within 15 days after the date of issue, as indicated on the bill for collection:

(i) Simple interest shall be assessed at the higher of the Current Value of Funds Rate or the Prompt Payment Rate, as established by the Secretary of the Treasury. Interest will begin to accrue as of the date of issue, as indicated on the initial bill for collection.

(ii) Debtors will be assessed administrative charges, in addition to the delinquent amount due. Administrative charges are those additional costs incurred by the Government in processing, handling, and collecting delinquent debts.

(iii) A penalty charge of six (6) percent per annum will be assessed on any portion of a debt delinquent more than 90 days. This penalty charge is in addition to interest and administrative charges under paragraphs (c)(i) and (c)(ii). The penalty charge shall accrue from the date of issue, as indicated on the bill for collection, and shall be assessed on all outstanding amounts, including interest and administrative costs assessed under paragraphs (c)(i) and (c)(ii).

(iv) Payments will be credited on the date received by the Federal Depository or Collection Officer designated on the bill for collection.

(d) Forest Service remedies for Purchaser's failure to make payment for timber cut and other charges when due, except for accrual of interest, suspension of all or any part of Purchaser's Operations, and administrative offset, shall be stayed for so long as:

(i) A bona fide dispute exists as to Purchaser's obligation to make such payment and

(ii) Purchaser files and prosecutes a timely Claim under BT9.2.

## **BT5.0—TRANSPORTATION FACILITIES**

**BT5.1 Authorization.** Purchaser is authorized to construct and maintain roads, bridges, and other transportation facilities, as needed for harvesting Included Timber on National Forest and other lands where Forest Service has such authority. As used in this contract "construct" includes "reconstruct."

Location and construction of Specified Roads shall be in accordance with BT5.2. Unless otherwise provided herein, construction may be progressive during this contract. Maintenance shall be governed by BT5.3. The location and clearing widths of all Temporary Roads or facilities

shall be agreed to before construction is started. "Temporary Roads" are roads other than Specified Roads that are constructed by Purchaser for the purpose of harvesting Included Timber.

Purchaser is authorized to cut and use for construction without charge construction timber designated by agreement.

**BT5.11 Requirements of Rights-of-Way.** Purchaser's road construction and use on rights-of-way identified in attached list or CT5.11 shall be confined to said rights-of-way and limited by the related easements and stipulations, if any, unless Purchaser makes other arrangements that will not infringe upon or adversely affect the grantee's rights. Said easements or right-of-way documents are available in the offices of the Forest Supervisor and District Ranger.

**BT5.12 Use of Roads by Purchaser.** Except as provided herein, Purchaser is authorized to use existing National Forest roads, in addition to Specified Roads listed in AT9, when such use will not cause damage to the roads or National Forest resources and when hauling can be done safely.

If Purchaser's use of an existing temporary or National Forest transportation system road, not listed in AT9, cannot be satisfactorily accommodated without reconstruction, Purchaser shall be authorized to use such road upon agreement as to the minimum reconstruction work that Purchaser shall perform before hauling. When appropriate, such road shall be included in AT9 as an alternate facility under BT5.26.

CT5.12 lists existing temporary or permanent roads shown on Sale Area Map that for such reasons as limitations in structural capacity, safety, and protection of soil, water, and roads:

(a) Cannot be used for log hauling or

(b) May be used only under the restrictive limitations stated therein.

**BT5.2 Specified Roads.** "Specified Roads" are roads, including related transportation facilities and appurtenances, shown on Sale Area Map and listed in AT9. Purchaser shall construct Specified Roads used under this contract. Construction initiated by Purchaser on any such Specified Road shall be completed to an agreed terminus that meets Purchaser's needs and prevents unnecessary impact on National Forest resources. Construction to such terminus shall be in full accordance with Drawings and specifications identified in AT9 or specifications attached hereto, except for agreed adjustments needed to accommodate such terminus. Record Forest Service estimated cost for the portion constructed as a separate segment in a revised table, designated AT10-1, AT10-2, etc., that shall supersede any prior table as AT10 when it is dated and signed by Contracting Officer and a copy is furnished to Purchaser.

A Temporary Road shall not be constructed substantially on the location for a Specified Road, except by agreement.

In event of agreed substitution or revision of construction design, specifications, or performance responsibility under BT5.212, BT5.25, BT5.26, or CT5.215, a revised

table designated AT9-1, AT9-2, etc. shall supersede any prior table as AT9, when it is dated and signed by Purchaser and Contracting Officer. If Purchaser does not need a Specified Road or a portion of a Specified Road for harvesting Included Timber and the Specified Road is not constructed, the deletion of the road or road segment will be a mutually agreed Design Change under BT5.253 and the Timber Sale Account will be debited for the reduction in cost.

References in the contract to specifications, standards, or test methods adopted by the American Association of State Highway and Transportation Officials (AASHTO), American Society for Testing and Material (ASTM), General Services Administration (GSA), or other recognized national technical associations shall mean specifications, standards, or test methods, including interim or tentative issues, that are in effect on the date of the timber sale advertisement.

**BT5.21 Engineering.** Forest Service completed survey and design for Specified Roads prior to timber sale advertisement, unless otherwise shown in AT13, or Purchaser survey and design are specified in AT9. On those roads for which Forest Service completes the design during the contract, the design quantities shall be used as the basis for revising estimated costs stated in AT10 and crediting or debiting the Timber Sale Account to reflect the change.

Forest Service engineering shall be completed according to the schedule in AT13. Should Forest Service be unable to perform the designated survey and design by the completion date or other agreed to time, upon written agreement, Purchaser shall assume responsibility for such work. In such event, Contracting Officer shall revise:

(a) AT9 to show Purchaser's performance responsibility.

(b) AT10 to include costs of survey and design, as provided under BT5.24, and credit the Timber Sale Account to accommodate such costs. Forest Service shall calculate such costs, using unit rates comparable with those used in AT10.

Purchaser shall furnish a schedule to Forest Service of specific dates for the start of construction. The schedule of construction shall be submitted to Forest Service for approval within 60 days after contract award and prior to beginning work. Purchaser's construction schedule shall reflect Forest Service survey and design completion dates. Forest Service may agree to Purchaser's request for an alternate date for starting construction.

Purchaser shall perform survey, design, and construction staking of Specified Roads to be engineered by Purchaser in accordance with specifications attached hereto. Based upon the quantities developed by such design, as approved by Forest Service, Contracting Officer shall revise the estimated costs stated in AT10 and the Timber Sale Account shall be credited or debited. The methods of computing such revised costs shall be consistent with the methods that would have been used had the engineering been performed prior to timber sale advertisement.

Total cumulative credits to the Timber Sale Account, under BT5.21, BT5.212, BT5.251, BT5.252, and BT5.253, are subject to a maximum allowance equal to the difference, at timber sale closure using final quantities, between total contract value at Base Rates and total contract value at stumpage rates paid. Payments for increased costs shall be made at the time the cost difference is calculated, subject to adjustment at time of timber sale closure.

**BT5.211 Contract Drawings.** "Drawings" are documents that show location, details, and dimensions of the work to be performed. On any of the contract Drawings where a portion of the work is drawn out and the remainder is shown in outline, the parts drawn out shall apply to all other like portions of the work.

"Shop Drawings" include Drawings, diagrams, layouts, schematics, descriptive literature, illustrations, lists or tables, performance and test data, and similar materials furnished by Purchaser to explain in detail specific portions of the work required by the contract. Purchaser shall submit a minimum of five (5) sets of required Shop Drawings to Forest Service, three (3) sets of which will be retained by Forest Service. Shop Drawings shall not exceed 24 inches by 36 inches in size. Approval or rejection and date will be noted or stamped on each set. Unless agreed otherwise, Forest Service shall approve or reject the Shop Drawings within 10 days of submission. Such approval of the Shop Drawings shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. If the Shop Drawings are rejected, Purchaser must make the noted revisions and resubmit the Shop Drawings.

Unless working tolerances are specified, all work performed and materials furnished shall be in reasonably close conformity with lines, grades, cross sections, dimensions, and material requirements shown on Drawings, indicated in specifications, or designated on the ground. Reasonably close conformity means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances.

A change in the amount of construction work that exceeds construction tolerances specified in the specifications identified in AT9 caused by a Forest Service error in construction staking shall be treated as a Design Change. When incompatible situations arise between Drawings, specifications, and actual conditions on the ground, Purchaser shall make corrections pursuant to BT5.253.

**BT5.212 Construction Staking.** Purchaser shall avoid careless or negligent damage to construction stakes, flags, or marks. If such damage occurs, Purchaser shall be required to replace stakes necessary to construction or, upon Purchaser's request and under written agreement, Purchaser shall bear costs of such replacement by Forest Service by depositing, with Forest Service in advance, sufficient sums to cover cost of such replacement. Any surplus funds remaining after such work is completed shall be refunded.

When AT9 shows that construction stakes are to be set by Forest Service after clearing, Purchaser shall submit to Forest Service a written schedule for clearing, construction staking, and construction that will provide Forest Service a reasonable period for setting construction stakes. Time for setting construction stakes may be modified by written agreement.

If Forest Service performs construction staking for Specified Roads, timing of such staking shall permit Purchaser's clearing and other construction activity to proceed without hindrance or delay, provided Purchaser's construction activity is reasonably consistent with needs identified in Purchaser's Operating Schedule or amendments thereto.

Should Forest Service be unable to perform construction staking in such reasonable period, upon written agreement, Purchaser shall assume the responsibility for construction staking for agreed upon portions of Specified Roads. In such event, Contracting Officer shall revise:

(a) AT9 to show Purchaser's performance responsibility.

(b) AT10 to include costs of construction staking, as provided under BT5.24, and credit the Timber Sale Account to accommodate such costs. Forest Service shall calculate such costs, using unit rates comparable with those used in AT10.

Total cumulative credits to the Timber Sale Account, under BT5.21, BT5.212, BT5.251, BT5.252, and BT5.253, are subject to a maximum allowance equal to the difference, at timber sale closure using final quantities, between total contract value at Base Rates and total contract value at stumpage rates paid. Payments for increased costs shall be made at the time the cost difference is calculated, subject to adjustment at time of timber sale closure.

**BT5.22 Material Delivery.** Within 60 days after award date, Purchaser shall provide Forest Service a written schedule showing the desired delivery dates of any material to be supplied by Forest Service. With reasonable notice, said schedule may be amended by agreement. Forest Service agrees to make delivery within 15 days after the scheduled delivery dates that are at least 60 days after the schedule is submitted, unless prevented by causes beyond control of Forest Service.

If Purchaser does not provide Forest Service the written schedule within the period provided in this Subsection, Forest Service agrees to make delivery within 90 days after a late schedule is submitted, unless prevented by causes beyond control of Forest Service. After delivery to and written receipt by Purchaser, Purchaser is responsible for installation of needed material and for any loss of or damage to such material due to Purchaser's negligence prior to installation or return of unused material to Forest Service.

At Purchaser's option, Forest Service deliveries shall be to Purchaser's storage area, as agreed, or to the nearest practicable point to the job site along existing roads. Unused material shall be returned to Forest Service at location of delivery, unless agreed otherwise.

#### **BT5.23 Use of Partially Constructed Roads.**

Portions of Specified Roads shall be Substantially Completed prior to their use for hauling timber from each established landing, except that Purchaser may be relieved in writing of this requirement if there is justification under existing conditions. When necessary to facilitate construction and protect bridges and roads from damage, timber felled in construction and timber logged directly to the road from areas immediately adjacent thereto may be hauled before road construction is Substantially Completed. Such hauling shall be confined to periods when abnormal soil erosion and damage to National Forest lands will not result.

"Substantially Completed" means:

(a) Completion of grading and installation of drainage structures so they will function effectively and

(b) Laying the specified depth of base course, if any, unless physical conditions make it impractical or ground conditions permit hauling without undue damage.

No more than half of Included Timber to be hauled over such portions of road shall be hauled until the base course has been applied.

Unless agreed otherwise, specified reconstruction shall be completed on any portion of road prior to hauling on that portion.

**BT5.24 Estimated Cost.** Estimated costs by construction phases for Specified Roads listed in AT9 are stated by segments in AT10. Such estimated costs are subject to adjustment under BT3.3, BT5.2, BT5.21, BT5.212, BT5.25, and BT5.26. Appropriately adjusted costs shall be made a part of a revised AT10 that shall be designated AT10-1, AT10-2, etc. The revised AT10 shall supersede any prior AT10 herein when it is dated and signed by Contracting Officer and a copy is furnished to Purchaser.

**BT5.25 Construction Cost Adjustment.** Contracting Officer, as provided in BT5.251, BT5.252, and BT5.253, shall adjust cost estimates in AT10.

**BT5.251 Variation in Quantities.** (a) This Item applies only to differences between contract quantities shown in the Schedule of Items and measured quantities actually constructed and accepted that are not covered under BT5.252 or BT5.253. Only changes in quantities where other than design and lump sum measurement is specified in the Schedule of Items are subject to this Item. The Timber Sale Account shall be credited or debited to reflect differences in costs due to variation in quantities.

(b) Credits and debits to the Timber Sale Account shall be computed at unit rates established in the Schedule of Items for units of work actually constructed and measured in accordance with specified method of measurement shown in the Schedule of Items and described in the specifications identified in AT9, except that:

(i) When quantity of authorized work performed or material furnished by Purchaser, under any item shown in the Schedule of Items and covered by this Item, is more than 115 percent of original quantity, use Current Unit Rates to calculate the credit to the

Timber Sale Account for that portion of work above 115 percent of original quantity.

(ii) When quantity of authorized work performed or material furnished by Purchaser, under any item shown in the Schedule of Items and covered by this Item, is less than 85 percent of original quantity, Forest Service shall make a revised estimate of cost for such work. Any revised estimate shall use the same procedures as those used in original estimates using rates comparable to those used in computing the most recent cost estimate for the timber sale. Any revised cost estimate shall take into account any increase or decrease in unit rates that results from a reduction in quantity of work.

(c) "Current Unit Rates" are Forest Service estimates of the unit rates for doing the work at the time the adjustment is approved.

(d) Total cumulative credits to the Timber Sale Account, under BT5.21, BT5.212, BT5.251, BT5.252, and BT5.253, are subject to a maximum allowance equal to the difference, at timber sale closure using final quantities, between total contract value at Base Rates and total contract value at stumpage rates paid. Payments for increased costs shall be made at the time the cost difference is calculated, subject to adjustment at time of timber sale closure.

**BT5.252 Physical Change.** (a) Credit the Timber Sale Account if, prior to acceptance under BT6.36, a physical change, caused by a single event and not due to negligence of Purchaser, results in an increase or decrease in work and/or materials furnished by Purchaser involving additional estimated cost of:

- (i) More than \$1,000 or
- (ii) More than 10 percent of total Specified Road construction cost, whichever is less.

(b) Credits to the Timber Sale Account shall include cumulative estimated costs of repairing damage from slides, washouts, landslips, fire, etc. caused by said event. Drawings and specifications shall be revised when necessary to meet new conditions. Quantities of work and/or materials determined from such revised Drawings and specifications, together with estimated quantities of work and/or materials abandoned, shall be the basis for the revised Specified Road construction cost.

(c) Forest Service shall determine difference in quantities for portions of Specified Road affected by physical change by comparing most recent previous quantities with total of:

- (i) Estimated quantities actually constructed prior to physical change, including work abandoned and
- (ii) Estimated quantities to be constructed following physical change.

(d) Calculate the amount of credit to the Timber Sale Account by applying:

- (i) Current Unit Rates to differences when quantities increase and
- (ii) Unit rates comparable to those used in computing most recent cost estimate for the timber sale when quantities decrease.

(e) When quantity of authorized work to be performed or material furnished by Purchaser, under any item shown in the Schedule of Items, is reduced to less than 85 percent of original quantity, Forest Service shall make a revised estimate of cost for such work and the Timber Sale Account shall be debited to reflect any cost reduction. Any revised estimate shall use the same procedures as those used in the original estimates using rates comparable to those used in the most recent cost estimate for the timber sale. However, the revised estimate shall take into account any increase or decrease in unit rates that results from a reduction in quantity of work.

(f) Total cumulative credits to the Timber Sale Account, under BT5.21, BT5.212, BT5.251, BT5.252, and BT5.253, are subject to a maximum allowance equal to the difference, at timber sale closure using final quantities, between total contract value at Base Rates and total contract value at stumpage rates paid. Payments for increased costs shall be made at the time the cost difference is calculated, subject to adjustment at time of timber sale closure.

**BT5.253 Design Change.** (a) "Design Change" is a change in work and/or materials shown in the Schedule of Items and described in Drawings or specifications that has been mutually agreed to in writing or ordered by Contracting Officer. Changes of a minor nature (such as adjustment in horizontal and vertical alignment that do not exceed specified tolerance, necessary to maintain or balance earthwork quantities substantially as designed) and "Variation in Quantities," as described in BT5.251, shall not be considered Design Changes.

(b) Additions, deletions, or changes in types or diameter of culverts shown in Drawings and changes in designated water sources shown on Drawings shall be considered Design Changes.

(c) Forest Service may, by written notice from Contracting Officer, order changes in work to be performed and/or materials to be furnished by Purchaser within general scope of the contract. Such work shall:

- (i) Be due to differences between anticipated and actual field conditions,
- (ii) Be necessary to construct Specified Roads to design standards, or
- (iii) Be necessary to assure stability of Specified Roads.

(d) In addition, work to protect resource values may also be included in Design Changes ordered by Contracting Officer. Such work must be related to construction of Specified Roads and be necessary to prevent damage to soil and water values immediately tributary to Specified Roads. Other Design Changes may be made by mutual written agreement.

(e) Drawings and specifications shall be revised as necessary to meet new conditions. Quantities of work and/or materials determined from such revised Drawings and specifications, together with quantities of work and/or materials abandoned, shall be the basis for crediting or debiting the Timber Sale Account, subject to a maximum credit equal to the difference, at timber sale closure using final quantities, between total contract value at Base

Rates and total contract value at stumpage rates paid. Increases and decreases in road construction cost for both mutually agreed to and ordered Design Changes are included when crediting or debiting the Timber Sale Account.

(f) Forest Service shall determine difference in quantities for portion of Specified Road affected by Design Change by comparing most recent previous quantities with total of:

(i) Estimated quantities actually constructed prior to Design Change and

(ii) Estimated quantities to be constructed following Design Change.

(g) Calculate the amount of credit or debit to the Timber Sale Account by applying:

(i) Current Unit Rates to difference when quantities increase and

(ii) Unit rates comparable to those used in computing most recent cost estimates of the timber sale when quantities decrease.

(h) When quantity of authorized work to be performed or material furnished by Purchaser, under any item shown in the Schedule of Items, is reduced to less than 85 percent of original quantity, Forest Service shall make a revised estimate of cost of such work. Any revised estimate shall use the same procedures as those used in original estimates using rates comparable to those used in the most recent cost estimate for the timber sale. However, the revised estimate shall take into account any increase or decrease in unit rates that results from a reduction in quantity of work.

(i) Payments for increased costs that cannot be reimbursed by crediting the Timber Sale Account shall be made at completion of each ordered Design Change, subject to adjustment at time of timber sale closure. Final quantities and Current Contract Rates shall be used to determine the final amount of reimbursement. Payments are subject to availability of construction funds for that purpose.

**BT5.26 Alternate Facilities.** If under Purchaser's Operating Schedule, roads needed for the removal of Included Timber differ substantially from Specified Roads, other roads may be added to AT9. The road routing, location, design, and needed easements shall be such as will make such other roads acceptable as parts of the National Forest transportation system. Purchaser shall provide survey, design, and construction staking for such other roads.

Based on design quantities from such engineering, Forest Service shall estimate Specified Road construction costs of alternate facilities, using methods consistent with those used in the original computation of AT10. If Specified Road construction costs for acceptable alternate facilities are less than the estimated costs of facilities listed in the original AT10 that Purchaser does not construct, the Timber Sale Account shall be debited by Forest Service to reflect the reduction in costs. In event of rate redetermination under BT3.3, such allowed costs shall be the redetermined estimated costs of facilities listed in the original AT10 that Purchaser does not construct.

**BT5.3 Road Maintenance.** Purchaser shall maintain roads, commensurate with Purchaser's use, in accordance with the Road Maintenance Requirements in CT5.31 and the Road Maintenance Specifications. Performance of road maintenance work by Purchaser may be required prior to, during, or after each period of use. The timing of work accomplishment shall be based on Purchaser's Operating Schedule under BT6.31.

When two or more commercial users are simultaneously using the same road where Forest Service is not requiring maintenance deposits, the commercial users will develop maintenance responsibilities and arrangements for accomplishing the work. Forest Service must agree to this plan. If the commercial users cannot agree on maintenance responsibilities, Forest Service shall resolve the differences.

If Purchaser elects to use different roads than those listed in CT5.31, Forest Service shall determine Purchaser's commensurate share of road maintenance and revise road maintenance deposits in CT5.32.

If Forest Service cannot perform its full commensurate share of road maintenance, Forest Service shall make a cash payment to Purchaser for performance of such work.

Unless agreed in writing, prehaul maintenance shall be completed on any portion of road prior to hauling on that portion. Maintenance, as used in this contract, does not include road reconstruction or repairs of an extraordinary nature.

**BT5.4 Use by Others.** Forest Service shall have the right to use any road constructed by Purchaser under this contract for any and all purposes in connection with the protection and administration of the National Forest. Other parties, in connection with the logging of tributary National Forest timber, may use roads constructed by Purchaser hereunder when such use will not materially interfere with Purchaser's Operations. Such third party use shall be contingent upon the third party paying a fair share of maintenance cost commensurate with such commercial use.

Unless otherwise provided in CT5.4, Forest Service shall authorize other uses of roads constructed by Purchaser hereunder only if:

(a) Forest Service makes appropriate arrangements to relieve Purchaser of related maintenance costs commensurate with such other uses and

(b) Such other uses will not materially interfere with Purchaser's Operations.

Where Purchaser reconstructs a road having established use, the use during reconstruction and thereafter by Purchaser shall be such as to reasonably accommodate such established use. Purchaser shall have the right to use such reconstructed road without material additional interference from other users.

## **BT6.0—OPERATIONS**

**BT6.01 Statutory Compliance.** Purchaser agrees to conduct operations under this contract and other related business activities in compliance with Fed-



eral, State, and local statutes, standards, orders, permits, or other regulations.

State and local environmental quality laws are applicable to National Forest lands. The contract shall govern if such laws conflict with or preclude performance of contractual requirements.

A conviction of, or a civil judgment for, any of the following offenses, shall be considered a breach of this Section and may result in termination of this contract pursuant to BT9.3:

(a) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property, which is in any way connected with obtaining, attempting to obtain, selling, trading, or processing public timber;

(b) Fraud, criminal offenses, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain, or performing a public contract or subcontract; or

(c) Threatening, resisting, intimidating, or interfering with Forest Officers engaged in, or on account of, the performance of their official duties involving the protection, improvement, or administration of National Forest lands.

**BT6.02 Interruption or Delay of Operations.** (a) Purchaser agrees to interrupt or delay operations under this contract, in whole or in part, upon the written request of Contracting Officer:

(i) To prevent serious environmental degradation or resource damage that may require contract modification under BT8.3 or termination pursuant to BT8.24;

(ii) To comply with a court order, issued by a court of competent jurisdiction; or

(iii) Upon determination of the appropriate Regional Forester that conditions existing on this timber sale are the same as, or nearly the same as, conditions existing on timber sale(s) named in such an order, as described in paragraph (a)(ii).

(b) Purchaser agrees that in event of interruption or delay of operations under this Subsection that its sole and exclusive remedy shall be:

(i) Contract Term Adjustment pursuant to BT8.21.

(ii) When such an interruption or delay exceeds 30 days, Contract Term Adjustment pursuant to BT8.21, plus Out-of-Pocket Expenses incurred as a direct result of interruption or delay of operations under this Subsection. Purchaser agrees to provide receipts or other documentation to Contracting Officer that clearly identify and verify actual expenditures.

(c) "Out-of-Pocket Expenses" are unrecovered costs arising directly from performing the contract as a result of an interruption of operations and occurring prior to contract termination. Specifically, Forest Service will only reimburse Purchaser for the following costs:

(i) Costs of maintaining timber sale performance and payment bonds during the period when operations are suspended;

(ii) Costs of maintaining downpayment or other cash deposit bonds during the period when opera-

tions are suspended (measured by interest on the cash amount at the Prompt Payment Rate established by the Secretary of the Treasury;

(iii) Move in and out costs directly related to the interruption of operations or termination;

(iv) Estimated expenditures for felling, bucking, logging, skidding, and decking any products so processed, but not removed from Sale Area because of termination action (based upon Forest Service appraisal methods in use when operations were interrupted); and

(v) The estimated expenditures for unused Temporary Roads and for Specified Road construction multiplied by the ratio of remaining quantity to advertised quantity.

(d) Forest Service will not reimburse any other costs claimed by Purchaser as Out-of-Pocket Expenses (for example, attorney's fees, lost profits, debt, employee wages, equipment depreciation, manufacturing inefficiencies, replacement cost of timber, or any other anticipatory losses suffered by Purchaser).

**BT6.1 Representatives.** Unless otherwise agreed, Purchaser shall designate, in writing, a representative who is authorized to receive notices in regard to performance under this contract and take related action. In no case shall Purchaser designate any representative to this contract who is currently debarred, proposed for debarment, or suspended by the Federal Government. Purchaser's representative shall provide a copy of the contract to Purchaser's field supervisor and persons authorized to assume responsibilities in the field supervisor's absence. Prior to initial operations and after shutdowns of 10 days or more, Purchaser's representative shall notify Forest Service 48 hours before any operations begin on the Sale Area.

Purchaser's representative shall designate, in writing, a field supervisor, one of whose responsibilities shall be on-the-ground direction and supervision of Purchaser's Operations. This person shall be readily available to the area of operations when operations are in progress and shall be authorized to receive notices in regard to performance under this contract and take related action. The responsibilities of this person shall include the safeguarding of National Forest resources and performance within the terms of the contract. Purchaser will furnish Forest Service with names of persons authorized to assume responsibilities in field supervisor's absence. Such delegations may be made a part of Purchaser's annual Operating Schedule under BT6.31.

Unless Contracting Officer designates another Forest Service representative and notifies Purchaser in writing, the District Ranger is the representative of Forest Service. Forest Service representative shall:

(a) Receive notice in regard to performance under this contract,

(b) Take action in relation to this contract, and

(c) Be readily available to the area of construction and logging operations.

Contracting Officer or Forest Service representative shall designate other on-the-ground representatives.

These persons shall be named in writing along with their specific contractual responsibilities and authority. Such delegation shall be made within 30 days of receipt of Purchaser's Plan of Operations.

**BT6.11 Notices.** Notices by either party as to action taken or to be taken by the other respecting this contract shall be made in writing to the other party's designated representative.

**BT6.2 Improvements.** Purchaser is authorized to construct on National Forest land, buildings, facilities, and other improvements needed to log Included Timber. Such construction shall be located where approved in writing by Forest Service and shall be constructed and used in a manner that will protect National Forest values. Forest Service may authorize Purchaser under special use permit or CT6.2 to establish and operate facilities on National Forest land to manufacture Included Timber.

Purchaser shall comply with the rules and regulations governing the operation of premises that are occupied and shall perform the contract in a manner that will not interrupt or interfere with the conduct of Forest Service business.

Before any camp, quarry, borrow pit, storage, or service area, other than as shown on Drawings, is opened or operated on National Forest land or lands administered by Forest Service, written permission shall be obtained through Forest Service. A camp is interpreted to include the campsite or trailer parking area of any employee working on the project for Purchaser. Such permission, if granted, shall be without charge to Purchaser.

**BT6.21 Removal.** Unless continued use is authorized, all said improvements shall be removed or disposed of by Purchaser when no longer needed. Should Purchaser fail to remove or dispose of said improvements within 6 months after Termination Date, Forest Service may dispose of said improvements at Purchaser's expense under BT9.5, or in lieu thereof, may, upon written notice to Purchaser, assume title to said improvements in the name of the United States. In the latter event, Purchaser shall not be required to remove such improvements.

**BT6.22 Protection of Improvements.** So far as practicable, Purchaser shall protect Specified Roads and other improvements (such as roads, trails, telephone lines, ditches, and fences):

- (a) Existing in the operating area,
- (b) Determined to have a continuing need or use, and
- (c) Designated on Sale Area Map.

Roads and trails needed for fire protection or other purposes and designated on Sale Area Map shall be kept reasonably free of equipment and products, slash, and debris resulting from Purchaser's Operations. Purchaser shall make timely restoration of any such improvements damaged by Purchaser's Operations and, when necessary because of such operations, shall move such improvements, as specified in CT6.22.

**BT6.221 Protection of Improvements Not Owned by Forest Service.** Forest Service will notify all utility companies, or other parties affected, and make ar-

rangements for all necessary adjustments of the public utility fixtures, pipelines, and other appurtenances affected by Purchaser's Operations.

When Purchaser's Operations are adjacent to properties of railway, telegraph, telephone, or power companies, or other property, work shall not begin until all necessary arrangements to prevent damage have been made by Purchaser.

Purchaser shall cooperate with the owners of any underground or overhead utility lines in their removal and/or rearrangement operations in order that these operations may progress in a reasonable manner, utility duplication or rearrangement work may be reduced to a minimum, and services shall not be unnecessarily interrupted.

In the event of interruption to utility services because of accidental breakage or as a result of lines being exposed or unsupported, Purchaser shall promptly notify the proper authority and shall cooperate with that authority in the restoration of service. If utility services are interrupted, cooperation shall be required until the service is restored.

When materials are to be hauled across the tracks of any railway, Forest Service will make arrangements with the railroad for the use of any existing crossing or for any new crossing required. Purchaser shall make arrangements for use of alternate crossings. All construction work to be performed by Purchaser on the railroad right-of-way shall not damage railroad company's property.

**BT6.222 Protection of Property.** In construction and reconstruction of Specified Roads, Purchaser shall not unnecessarily remove, deface, injure, or destroy trees, shrubs, or other natural features, unless specifically authorized. To the extent practicable, Purchaser shall confine operations to within the clearing limit or other areas designated in the contract and prevent the depositing of rocks, excavated materials, stumps, or other debris outside these limits.

Material that falls outside these limits shall be retrieved, disposed of, or incorporated in the work to the extent practicable and necessary to protect adjacent resource values, unless otherwise agreed.

**BT6.23 Protection of Land Survey Monuments.** Forest Service shall appropriately designate on the ground all known survey monuments, section corners, and other corner accessories. Forest Service shall post identifying signs on two sides of each known bearing tree.

In authorized clearings, such as Clearcutting Units and road construction, and in other instances where damage to monuments, section corners, and other corner accessories is unavoidable, Forest Service shall arrange protective or perpetuative action that does not cause unnecessary delay to Purchaser.

Purchaser shall protect all known survey monuments, witness corners, reference monuments, and bearing trees against avoidable destruction, obliteration, or damage during Purchaser's Operations. If any known monuments, corners, or accessories are destroyed, obliterated, or damaged by Purchaser's Operations, Purchaser shall hire the appropriate county surveyor or a registered land surveyor to reestablish or restore at the same location the monuments, corners, or accessories. Such surveyors

shall use procedures in accordance with the Bureau of Land Management "Manual of Instructions for the Survey of the Public Lands of the United States" for General Land Office surveys and in accordance with State law for others. Purchaser shall record such survey in appropriate county records.

#### **BT6.24 Protection of Cultural Resources.**

Locations of known historic or prehistoric sites, buildings, objects, and properties related to American history, architecture, archaeology, and culture, such as settler or Indian artifacts, protected by American Antiquities Act of 1906 (16 USC 432, 433), National Historic Preservation Act of 1966 (16 USC 470, *et seq.*), and the Archaeological Resources Protection Act of 1979 (16 USC 470aa-470mm), shall be identified on the ground by Forest Service. Contracting Officer may unilaterally modify or terminate this contract to protect an area, object of antiquity, artifact, or similar object that is or may be entitled to protection under these acts, regardless of when the area, object, or artifact is discovered or identified. Discovery of such areas by either party shall be promptly reported to the other party and operations will be suspended at that location until the significance or potential significance of the site is determined.

In the event of contract modification under this Subsection, Purchaser shall be reimbursed for any additional protection required, provided that any work or extra protection required shall be subject to prior approval by Forest Service. Amount of reimbursement shall be determined by Forest Service and shall be in the form of a reduction in stumpage rates, unless agreed otherwise in writing. However, in no event may stumpage rates be reduced below Base Rates.

Purchaser shall protect all known and identified historic or prehistoric sites, buildings, objects, and properties related to American history, architecture, archaeology, and culture against destruction, obliteration, removal, or damage during Purchaser's Operations. Measures needed to protect such areas are provided in CT6.24. Purchaser shall immediately notify Forest Service if disturbance occurs to any known site and shall immediately halt operations in the vicinity of the site until Forest Service authorizes Purchaser to proceed. Purchaser shall bear costs of evaluation and restoration in accordance with 36 CFR 296.14(c), provided that such payment shall not relieve Purchaser from civil or criminal remedies otherwise provided by law.

Wheeled or track-laying equipment shall not be operated within such areas, except on roads, landings, tractor roads, or skid trails approved under BT5.1 or BT6.422. Unless agreed otherwise, trees will not be felled into such areas. Purchaser may be required to backblade skid trails and other ground disturbed by Purchaser's Operations within such areas in lieu of cross ditching required under BT6.6.

**BT6.25 Protection of Threatened, Endangered, and Sensitive Species.** Locations of areas needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act of 1973 or as sensitive plant and animal

species on the Regional Forester's list are shown on Sale Area Map and identified on the ground. Measures needed to protect such areas are provided in CT6.25.

If protection measures prove inadequate, if other such areas are discovered, or if new species are listed on the Endangered Species List or the Regional Forester's sensitive plant and animal species list, Contracting Officer may either terminate under BT8.24 or unilaterally modify this contract to provide additional protection, regardless of when such facts become known. Discovery of such areas by either party shall be promptly reported to the other party and operations will be suspended at that location until the significance or potential significance of the area is determined.

In the event of contract modification under this Subsection, Purchaser shall be reimbursed for any additional protection required by the modification, provided that any work or extra protection required shall be subject to prior approval by Forest Service. Amount of reimbursement shall be determined by Forest Service using standard Forest Service rate redetermination methods in effect at time of agreed change and shall be in the form of a reduction in Current Contract Rates, unless agreed otherwise in writing. However, in no event may Current Contract Rates be reduced below Base Rates.

**BT6.26 Protection of Cave Resources.** Locations of known caves, sinkholes, vertical shafts, and related features protected by the Federal Cave Resources Protection Act of 1988 (16 USC 4301, *et seq.*) are shown on the Sale Area Map and identified on the ground. Purchaser shall protect all known caves, sinkholes, vertical shafts, and related features from damage during Purchaser's Operations. Measures needed to protect such areas are provided in CT6.26. Purchaser shall immediately notify Forest Service if disturbance occurs to any identified feature and shall immediately halt operations in the vicinity of the feature until Forest Service authorizes Purchaser to proceed. Purchaser shall bear costs of resource damage evaluation and restoration, provided that such payment shall not relieve Purchaser from civil or criminal remedies otherwise provided by law. Discovery of caves, sinkholes, vertical shafts, and related features by either party shall be promptly reported to the other party and operations will be suspended at that location until the significance or potential significance of the feature is determined.

If protection measures prove inadequate, or if other caves, sinkholes, vertical shafts, and related features are discovered, Contracting Officer may unilaterally modify or terminate this contract to protect features that are or may be entitled to protection under this act, regardless of when discovered or identified. In the event of contract modification under this Subsection, Purchaser shall be reimbursed for any additional protection required, provided that any work or extra protection required shall be subject to prior approval by Forest Service. Amount of reimbursement shall be determined by Forest Service and shall be in the form of a reduction in stumpage rates,

unless agreed otherwise in writing. However, in no event may stumpage rates be reduced below Base Rates.

**BT6.3 Control of Operations.** Under this contract, "Purchaser's Operations" shall include activities of or use of equipment of Purchaser, Purchaser's employees, agents, contractors, Subcontractors, or their employees or agents, acting in the course of their employment in operations hereunder on National Forest lands or within Forest Service protection boundary (unless acting under the immediate supervision of Forest Service).

Purchaser's Operations shall be conducted in a workmanlike and orderly manner. The timing of required Forest Service designation of work on the ground and the performance of other Forest Service work shall not be such as to cause unnecessary delay to Purchaser.

"Release for Cutting" is written authorization to Purchaser to begin cutting in a Payment Unit. Upon Purchaser's request for release of a Payment Unit, Forest Service shall either:

(a) Give tentative approval and bill Purchaser as necessary under BT4.22 or

(b) Reject the request, stating reasons for rejection.

When payment or payment guarantee has been confirmed, Forest Service shall issue Release for Cutting within 10 days. Purchaser shall not cut timber in any Payment Unit until it is Released for Cutting.

**BT6.31 Operating Schedule.** Purchaser shall, before commencing operations, provide in writing an annual Operating Schedule of anticipated major activities and needs for logging Included Timber, such as logging, road maintenance, and construction, including construction and staking schedule under BT5.212 and material delivery under BT5.22. Upon reasonable notice to Forest Service, such schedule shall be subject to modifications necessitated by weather, markets, or other unpredictable circumstances.

Subject to BT6.6 and when the requirements of BT6.66 are met, Purchaser's Operations may be conducted outside Normal Operating Season. "Normal Operating Season" is the period(s) beginning and ending on the dates stated in AT18 of any year.

**BT6.311 Plan of Operations.** For timber sales with 2 or more years between award date and Termination Date, within 60 days of final award of contract, Purchaser shall furnish Forest Service a written general Plan of Operations that shall be in addition to the annual Operating Schedule required under BT6.31. The Plan shall set forth planned periods for and methods of road construction, timber harvesting, and completion of slash disposal, erosion control measures, and other contractual requirements. Forest Service written approval of the Plan of Operations is prerequisite to commencement of Purchaser's Operations. Purchaser may revise this Plan of Operations when necessitated by weather, markets, or other unpredictable circumstances, subject to the written approval of Forest Service. In the event of delays beyond the control of Purchaser that qualify for Contract Term Adjustment under BT8.21, the Plan of Operations shall be mutually adjusted as necessary to accommodate the adjusted contract period.

**BT6.312 Plan of Operations for Road Construction.** Annually, prior to start of construction, Purchaser shall submit a supplement to the Plan of Operations that shall include a schedule of proposed progress and a description of planned measures to be taken to provide erosion control for work in progress, including special measures to be taken on any segments of construction not Substantially Completed prior to periods of seasonal precipitation or runoff. Purchaser shall submit a revised schedule when Purchaser proposes a significant deviation from the progress schedule.

Prior to beginning construction on any portion of Specified Roads identified as sensitive on Drawings, Purchaser and Forest Service shall agree on proposed method of construction.

**BT6.32 Protection of Residual Trees.** Purchaser's Operations shall not unnecessarily damage young growth or other trees to be reserved.

**BT6.33 Safety.** Purchaser's Operations shall facilitate Forest Service's safe and practical inspection of Purchaser's Operations and conduct of other official duties on Sale Area.

Unless otherwise agreed in writing, when Purchaser's Operations are in progress adjacent to or on Forest Service controlled roads and trails open to public travel, Purchaser shall furnish, install, and maintain all temporary traffic controls that provide the user with adequate warning of hazardous or potentially hazardous conditions associated with Purchaser's Operations. Purchaser and Forest Service shall agree to a specific Traffic Control Plan for each individual project prior to commencing operations. Devices shall be appropriate to current conditions and shall be covered or removed when not needed. Except as otherwise agreed, flagmen and devices shall be as specified in the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD) and as shown on Drawings, Sale Area Map, Traffic Control Plan, or in specifications attached hereto.

**BT6.34 Sanitation and Servicing.** Purchaser shall take all reasonable precautions to prevent pollution of air and water by Purchaser's Operations. If facilities for employees are established on Sale Area, they shall be operated in a sanitary manner. Refuse resulting from Purchaser's use, servicing, repair, or abandonment of equipment shall be removed from National Forest lands or buried at agreed locations. Purchaser shall not service tractors, trucks, or other equipment on National Forest lands where pollution to lakes, streams, or estuaries is likely to occur.

**BT6.341 Prevention of Oil Spills.** If Purchaser maintains storage facilities for oil or oil products on Sale Area, Purchaser shall take appropriate preventive measures to ensure that any spill of such oil or oil products does not enter any stream or other waters of the United States or any of the individual States.

If the total oil or oil products storage exceeds 1,320 gallons or if any single container exceeds a capacity of 660 gallons, Purchaser shall prepare a Spill Prevention Control and Countermeasures Plan. Such Plan shall meet

applicable EPA requirements (40 CFR 112), including certification by a registered professional engineer.

**BT6.36 Acceptance of Work.** Upon Purchaser's written request and assurance that work has been completed, Forest Service shall perform an inspection promptly so as not to delay unnecessarily the progress of Purchaser's Operations. Such a request may be for acceptance of:

(a) Any reasonable portion of Specified Road listed in AT10;

(b) Specific requirements on a Payment Unit (such as logging, slash disposal, erosion control, or snag felling); or

(c) All contract requirements on a Payment Unit.

Forest Service may perform such inspections without request from Purchaser.

Within 5 days of said inspection, Forest Service shall furnish Purchaser with written notice either of acceptance or of work remaining to be done.

In the event that Forest Service is unable to make such inspection within 10 days of Purchaser's request, Purchaser shall be notified in writing of necessity for postponement and time when inspection can be made. The same final approval procedure shall be used at the end of Purchaser's construction period on any completed portion of road.

When all contractual work of Purchaser has been accepted for any Payment Unit, said Payment Unit shall be eliminated from Sale Area on written notice of either party to this contract, unless such Payment Unit is a portion of a larger cutting unit. In the latter circumstance, such Payment Unit may be eliminated only by agreement.

**BT6.361 Acceptance of Specified Roads.** Specified Road work may be accepted subject to completion of clearing work that does not affect the road structure when completion is delayed for reasons beyond control of Purchaser, such as adverse weather.

Specified Road work may be accepted subject to completion of planting and seeding for soil stabilization when completion is delayed for reasons beyond control of Purchaser, such as seasonal limitations. Purchaser shall complete planting or seeding on such road during the next suitable planting season.

Specified Road work may be conditionally accepted prior to the application of bituminous dust palliatives when application is not necessary to prevent dusting of the road surface due to climatic conditions. Purchaser shall apply bituminous dust palliative on such roads prior to use during periods when dusting may occur.

Prior to request for final inspection of Specified Road work, roadways, borrow pits, and quarries, occupied and no longer needed by Purchaser in connection with Purchaser's Operations, shall be cleared of all rubbish, excess materials, and temporary structures.

**BT6.4 Conduct of Logging.** Unless otherwise specifically provided herein, Purchaser shall fell trees designated for cutting and shall remove the portions that meet Utilization Standards, as provided in BT2.2, prior to acceptance of Payment Unit for completion of logging under BT6.36. Exception may be made for occasional trees in-

advertently not cut or trees or pieces not removed for good reason, including possible damage to forest resources or gross economic impracticability at the time of removal of other timber. Logging shall be conducted in accordance with the following, unless CT6.4 provisions set forth requirements to meet special or unusual logging conditions:

**BT6.41 Felling and Bucking.** Felling shall be done to minimize breakage of Included Timber and damage to residual timber. Unless agreed otherwise, felling shall be done by saws or shears. Bucking shall be done to permit removal of all minimum pieces set forth in AT2. Purchaser may buck out cull material when necessary to produce pieces meeting Utilization Standards. Such bucked out material shall contain a minimum amount of sound wood, not in excess of the net Measure in percentage of gross Measure, or based on the merchantability factor, whichever is stated in AT2. If necessary to assess extent of defect, Purchaser shall make sample saw cuts or wedges.

**BT6.411 Felling in Clearings.** Insofar as ground conditions, tree lean, and shape of clearings permit, trees shall be felled so that their tops do not extend outside Clearcutting Units, construction clearings, and areas of regeneration cutting.

**BT6.412 Stump Heights.** Stumps shall not exceed, on the side adjacent to the highest ground, the maximum heights set forth in AT8, except that occasional stumps of greater heights shall be acceptable when necessary for safe and efficient conduct of logging. Except for acceptable high stumps provided for in this Item, Purchaser shall re-cut high stumps so they will not exceed heights specified in AT8 and shall dispose of severed portions in the same manner as other logging debris or as otherwise agreed. The stump heights shown in AT8 were selected with the objective of maximum reasonable utilization of the timber, unless Sale Area Map shows special areas where stump heights are lower for aesthetic, land treatment, or silvicultural reasons.

**BT6.413 Limbing.** When necessary to minimize damage to the residual stand during skidding, exposed limbs shall be cut from products prior to skidding. Such limbs may be left uncut that cannot be cut with reasonable safety.

**BT6.42 Skidding and Yarding.** Methods of skidding or yarding specified for particular areas, if any, are indicated on Sale Area Map. Outside Clearcutting Units and construction clearings, insofar as ground conditions permit, products shall not be skidded against reserve trees or groups of reproduction and tractors shall be equipped with a winch to facilitate skidding.

**BT6.421 Rigging.** Insofar as practicable, needed rigging shall be slung on stumps or trees designated for cutting.

**BT6.422 Landings and Skid Trails.** Location of all landings, tractor roads, and skid trails shall be agreed upon prior to their construction. The cleared or excavated size of landings shall not exceed that needed for safe and efficient skidding and loading operations.

**BT6.423 Skidding on Roads.** Products may be skidded on permanent roads authorized for hauling under BT5.12 only by prior written agreement.

**BT6.424 Arches and Dozer Blades.** Unless otherwise specified in CT6.424, skidding tractors equipped with pull-type arches or dozer blades wider than tractor width or C-frame width, whichever is greater, shall not be used in residual timber outside Clearcutting Units and other authorized clearings, except on constructed tractor roads or landings, unless there is written agreement that residual timber will not be damaged materially by such use.

**BT6.5 Streamcourse Protection.** "Streamcourses" that are subject to provisions of this Section are shown on Sale Area Map. Unless otherwise agreed, the following measures shall be observed to protect Streamcourses:

(a) Purchaser's Operations shall be conducted to prevent debris from entering Streamcourses, except as may be authorized under paragraph (d). In event Purchaser causes debris to enter Streamcourses in amounts that may adversely affect the natural flow of the stream, water quality, or fishery resource, Purchaser shall remove such debris as soon as practicable, but not to exceed 48 hours, and in an agreed manner that will cause the least disturbance to Streamcourses.

(b) Culverts or bridges shall be required on Temporary Roads at all points where it is necessary to cross Streamcourses. Such facilities shall be of sufficient size and design and installed in a manner to provide unobstructed flow of water and to minimize damage to Streamcourses. Trees or products shall not be otherwise hauled or yarded across Streamcourses unless fully suspended.

(c) Wheeled track-laying equipment shall not be operated in Streamcourses, except at crossings designated by Forest Service or as essential to construction or removal of culverts and bridges.

(d) Flow in Streamcourses may be temporarily diverted only if such diversion is necessary for Purchaser's planned construction and Forest Service gives written authorization. Such flow shall be restored to the natural course as soon as practicable and, in any event, prior to a major storm runoff period or runoff season.

**BT6.6 Erosion Prevention and Control.** Purchaser's Operations shall be conducted reasonably to minimize soil erosion. Equipment shall not be operated when ground conditions are such that excessive damage will result. The kinds and intensity of erosion control work done by Purchaser shall be adjusted to ground and weather conditions and the need for controlling runoff. Erosion control work shall be kept current immediately preceding expected seasonal periods of precipitation or runoff.

If Purchaser fails to do seasonal erosion control work prior to any seasonal period of precipitation or runoff, Forest Service may temporarily assume responsibility for the work and any unencumbered deposits hereunder may be used by Forest Service to do the work. If needed for such work, Purchaser shall make additional deposits on request by Forest Service. Any money deposited or used

for this purpose shall be treated as cooperative deposits under BT4.228.

**BT6.61 Meadow Protection.** Reasonable care shall be taken to avoid damage to the cover, soil, and water in meadows shown on Sale Area Map. Vehicular or skidding equipment shall not be used on meadows, except where roads, landings, and tractor roads are approved under BT5.1 or BT6.422. Unless otherwise agreed, trees felled into meadows shall be removed by endlining. Resulting logging slash shall be removed where necessary to protect cover, soil, and water.

**BT6.62 Wetlands Protection.** Wetlands requiring protection under Executive Order 11990 are shown on Sale Area Map. Vehicular or skidding equipment shall not be used in such wetlands, except where roads, landings, and tractor roads are approved under BT5.1 or BT6.422. Additional measures needed to protect such areas are provided in CT6.62.

**BT6.63 Temporary Roads.** As necessary to attain stabilization of roadbed and fill slopes of Temporary Roads, Purchaser shall employ such measures as out-sloping, drainage dips, and water-spreading ditches.

After a Temporary Road has served Purchaser's purpose, Purchaser shall give notice to Forest Service and shall remove bridges and culverts, eliminate ditches, out-slope roadbed, remove ruts and berms, effectively block the road to normal vehicular traffic where feasible under existing terrain conditions, and build cross ditches and water bars, as staked or otherwise marked on the ground by Forest Service. When bridges and culverts are removed, associated fills shall also be removed to the extent necessary to permit normal maximum flow of water.

**BT6.631 Temporary Roads to Remain Open.** To maintain short term access to portions of Sale Area for post-sale treatments and other purposes after a Temporary Road has served Purchaser's purpose, pursuant to BT6.63, Purchaser agrees, that on Temporary Roads designated on Sale Area Map as "Remain Open," to construct cross ditches and water bars, as designated, staked, or otherwise directed by Forest Service, that can be traversed by a normal two-wheeled drive pickup truck. On "Remain Open" Temporary Roads, all bridges and culverts shall remain in place and ditches shall not be eliminated.

**BT6.64 Landings.** After landings have served Purchaser's purpose, Purchaser shall ditch and slope them to permit water to drain or spread. Unless agreed otherwise, cut and fill banks around landings shall be sloped to remove overhangs and otherwise minimize erosion.

**BT6.65 Skid Trails and Fire Lines.** Purchaser shall construct cross ditches and water-spreading ditches on tractor roads and skid trails, where staked or otherwise marked on the ground by Forest Service. Forest Service shall designate cross ditching on Purchaser-built fire lines prior to or during construction. By agreement, Purchaser may use other comparable erosion control measures, such as backblading skid trails, in lieu of cross ditching.

**BT6.66 Current Operating Areas.** Where logging or road construction is in progress but not com-

pleted, unless agreed otherwise, Purchaser shall, before operations cease annually, remove all temporary log culverts and construct temporary cross drains, drainage ditches, dips, berms, culverts, or other facilities needed to control erosion.

Such protection shall be provided, prior to end of a Normal Operating Season, for all disturbed, unprotected ground that is not to be disturbed further prior to end of operations each year, including roads and associated fills, tractor roads, skid trails, and fire lines. When weather permits operations after Normal Operating Season, Purchaser shall keep such work on any additional disturbed areas as up to date as practicable.

**BT6.67 Erosion Control Structure Maintenance.** During the period of this contract, Purchaser shall provide maintenance of soil erosion control structures constructed by Purchaser until they become stabilized, but not for more than 1 year after their construction. Contracting Officer may agree to perform such structure maintenance under BT4.228, if requested by Purchaser, subject to agreement on rates. Purchaser shall not be responsible for repair of such structures damaged by other National Forest users whose activities are not a part of Purchaser's Operations.

**BT6.7 Slash Disposal.** Purchaser's timing of product removal and preparatory work shall not unnecessarily delay slash disposal. Specific slash disposal measures to be employed by Purchaser are stated in CT6.7 and are in addition to Required Deposits for slash disposal.

**BT6.8 Measuring.** "Measuring" is the estimation of timber quantities using certain dimensions and applicable volume tables or formulae to determine the contents of trees or stands in a standard manner. Sampling may be on an individual tree or area basis. Examples of standard procedures are tree measurement, sample tree measurement, and area estimate. The quantity of timber designated or to be designated for cutting has been or shall be Measured, as specified in CT6.8.

**BT6.81 Product Identification.** For timber sales west of the 100th meridian, before removal from the Sale Area, unless Contracting Officer determines that circumstances warrant a written waiver or adjustment, Purchaser shall:

(a) Hammer brand all products that are eight (8) feet or more in length and one-third (1/3) or more sound, on each end that is seven (7) inches or more in diameter.

(b) Paint with a spot of highway-yellow paint all domestic processing products that are eight (8) feet or more in length and one-third (1/3) or more sound, on each end that is seven (7) inches or more in diameter. Each paint spot must be not less than three (3) square inches in size.

Contracting Officer shall assign brands and, if the Sale Area is within a State that maintains a log brand register, brands shall be registered with the State. Purchaser shall use assigned brand exclusively on logs from this sale until Contracting Officer releases brand. Purchaser will furnish and apply highway-yellow paint of a lasting quality (oil-base or equivalent).

All hammer brands and/or highway-yellow paint must remain on logs until they are domestically processed. If

the identifying marks are lost, removed, or become unreadable, they shall be replaced. Purchaser may remanufacture products into different log lengths. Except for logs remanufactured as part of the mill in-feed process immediately before processing, remanufactured products must be rebranded with the assigned timber sale brand and repainted with highway-yellow paint, unless otherwise agreed to in writing by Contracting Officer. For such remanufactured products, Contracting Officer may approve use of a brand to be used exclusively as a catch brand, in lieu of the assigned timber sale brand.

**BT6.9 Records.** Upon request, Purchaser shall provide access to appropriate annual records in Purchaser's books and accounts to enable Forest Service to obtain and analyze accurate operating costs and selling price data for appropriate use in appraising Federal timber. However, upon receiving such a request from Contracting Officer, Purchaser may make written notice that such data shall be provided through an independent certified public accountant approved by Contracting Officer. Purchaser agrees that the certified public accountant shall do such work in accordance with specifications provided by Contracting Officer. Purchaser shall pay cost of such services. Data so provided shall be subject to acceptance by Forest Service and subject to review and adjustment, where needed, by Forest Service.

Operating cost and selling price data shall include that applicable for appraising timber obtained from Federal sources in or processed in the Region. Purchaser shall provide access to such data on behalf of subsidiary entities owned or controlled by Purchaser to the extent they participate in harvesting, manufacturing, or marketing said timber into products recognized in National Forest timber appraisals in the area. To a like extent, Purchaser shall request in writing Purchaser's contractors and Subcontractors to make such data available to Forest Service.

Information so obtained shall be treated as confidential, as provided in regulations issued by the Secretary of Agriculture (7 CFR 1.12), and shall be available for review by parties from whom such data are obtained.

## **BT7.0—FIRE PRECAUTIONS AND CONTROL**

**BT7.1 Plans.** Prior to initiating Purchaser's Operations during Fire Precautionary Period, Purchaser shall file with Forest Service a Fire Prevention and Control Plan providing for the prevention and control of fires on Sale Area and other areas of Purchaser's Operations. Such Plan shall include a detailed list of personnel and equipment at Purchaser's disposal for implementing the Plan. This requirement may be met by preparing a single Plan for more than one timber sale.

**BT7.2 Fire Precautions.** Specific fire precautionary measures listed in CT7.2 shall be applicable during Purchaser's Operations in "Fire Precautionary Period" described in AT14. Contracting Officer may change the dates of Fire Precautionary Period by advance written notice, if justified by unusual weather or other conditions. Required tools and equipment shall be kept in serviceable condition and immediately available for fire fighting at all

times during Purchaser's Operations in Fire Precautionary Period.

**BT7.21 Substitute Precautions.** Forest Service may authorize substitute measures or equipment, or waive specific requirements by written notice, if substitute measures or equipment will afford equal protection or some of the required measures and equipment are unnecessary.

**BT7.22 Emergency Precautions.** Forest Service may require the necessary shutting down of equipment on portions of Purchaser's Operations, as specified by the emergency fire precautions schedule of CT7.22. Under such conditions, after Purchaser ceases active operations, Purchaser shall release for hire by Forest Service, if needed, Purchaser's shutdown equipment for fire standby on Sale Area or other areas of Purchaser's Operations and personnel for fire standby or fire patrol, when such personnel and equipment are not needed by Purchaser for other fire fighting or protection from fire. Equipment shall be paid for at fire fighting equipment rates common in the area or at prior agreed rates and, if Purchaser requests, shall be operated only by personnel approved by Purchaser. Personnel so hired shall be subject to direction and control by Forest Service and shall be paid by Forest Service at fire fighting rates common in the area or at prior agreed rates.

**BT7.3 Fire Control.** Purchaser shall, both independently and in cooperation with Forest Service, take all reasonable and practicable action to prevent and suppress fires resulting from Purchaser's Operations and to suppress any forest fire on Sale Area. Purchaser's independent initial fire suppression action on such fires shall be immediate and shall include the use of all necessary personnel and equipment at Purchaser's disposal on Sale Area or within the distance of Sale Area stated in AT15.

**BT7.31 Purchaser's Reinforcement Obligations.** Whenever an Operations Fire or Negligent Fire, whether on or off Sale Area, or any other forest fire on Sale Area, has not been suppressed by initial action and appreciable reinforcement strength is required, Forest Service may require further actions by Purchaser until such fire is controlled and mopped up to a point of safety. Such actions may include any or all of the following as necessary to fight such fire:

**BT7.311 Suspend Operations.** To suspend any or all of Purchaser's Operations.

**BT7.312 Personnel.** To release for employment by Forest Service any or all of Purchaser's personnel engaged in Purchaser's Operations or timber processing within the distance of Sale Area stated in AT15. Any organized crew so hired shall include Purchaser's supervisor, if any. Personnel so employed shall be paid at Forest Service standard emergency fire fighting rates.

**BT7.313 Equipment.** To make available for Forest Service rental at fire fighting equipment rates common in the area or at prior agreed rates any or all of Purchaser's equipment suitable for fire fighting and currently engaged in Purchaser's Operations within the distance of Sale Area stated in AT15. Equipment shall be

operated only by personnel approved by Purchaser, if so requested by Purchaser.

**BT7.4 Fire Suppression Costs.** Purchaser's obligations for cost of fire suppression vary according to three classifications of fires as follows:

**BT7.41 Operations Fire.** An "Operations Fire" is a fire caused by Purchaser's Operations other than a Negligent Fire.

Forest Service, except as provided in BT7.3, shall, under 16 USC 572, perform fire suppression activities on Operations Fires. Purchaser agrees to reimburse Forest Service for such cost for each Operations Fire, subject to a maximum of the dollar amount stated in AT16. The cost of Purchaser's actions, supplies, and equipment on any such fire provided pursuant to BT7.3, or otherwise at the request of Forest Service, shall be credited toward such maximum. If Purchaser's actual cost exceeds Purchaser's obligation stated in AT16, Forest Service shall reimburse Purchaser for the excess.

**BT7.42 Negligent Fire.** A "Negligent Fire" is a fire caused by negligence or fault of Purchaser's Operations, including, but not limited to, one caused by smoking by persons engaged in Purchaser's Operations during the course of their employment, or during rest or lunch periods; or if Purchaser's failure to comply with the requirements of BT7.2 and BT7.3 results in a fire starting or permits a fire to spread. Damages and the cost of suppressing Negligent Fires shall be borne by Purchaser.

**BT7.43 Other Fires on Sale Area.** Forest Service shall pay Purchaser, at fire fighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by Purchaser pursuant to BT7.3, or otherwise at the request of Forest Service, on any fire on Sale Area other than an Operations Fire or a Negligent Fire.

**BT7.5 State Law.** Purchaser shall not be relieved by the terms of this contract of any liability to the United States for fire suppression costs recoverable in an action based on State law, except for such costs resulting from Operations Fires. Amounts due Purchaser for fire fighting expenditures in accordance with BT7.41 shall not be withheld pending settlement of any such claim or action based on State law.

**BT7.6 Performance by Contractor.** Where Purchaser's employees, agents, contractors, Subcontractors, or their employees or agents perform Purchaser's Operations in connection with fire responsibilities, Purchaser's obligations shall be the same as if performance was by Purchaser.

## **BT8.0—OTHER CONDITIONS**

### **BT8.1 Title and Liability.**

**BT8.11 Title Passage.** All right, title, and interest in and to any Included Timber shall remain in Forest Service until it has been Measured, removed from Sale Area or other authorized cutting area, and paid for, at which time title shall vest in Purchaser. For purposes of this Subsection, timber in Payment Units Released for Cutting covered by cash deposit, transferred-in purchaser credit, or payment guarantee under BT4.3 shall be considered to



have been paid for. Title to any Included Timber that has been Measured and paid for, but not removed from Sale Area or other authorized cutting area by Purchaser on or prior to Termination Date, shall remain in Forest Service.

**BT8.12 Liability for Loss.** If Included Timber is destroyed or damaged by fire, wind, flood, insects, disease, or similar cause, the party holding title shall bear the timber value loss resulting from such destruction or damage, except that such losses caused by insect or disease after felling of timber, shall be borne by Purchaser, unless Purchaser is prevented from removing such timber for reasons that would qualify for Contract Term Adjustment. There shall be no obligation for Forest Service to supply, or for Purchaser to accept and pay for, other timber in lieu of that destroyed or damaged. This Subsection shall not be construed to relieve either party of liability for negligence.

**BT8.2 Period of Contract.** All obligations of Purchaser shall be discharged not later than "Termination Date" stated in AT17, unless it is adjusted pursuant to BT8.21 or BT8.212 or extended pursuant to BT8.23 or BT8.33, excepting only those obligations for which Forest Service has given written permission to delay performance. Such written permission shall be considered a Contract Term Adjustment for the purpose of Purchaser completing performance of obligations covered by such permission.

**BT8.21 Contract Term Adjustment.** "Contract Term Adjustment" means adjustment only as provided in BT8.2 and for the three circumstances described in this Subsection. Under said circumstances, the contract term shall be adjusted in writing to include additional calendar days in one or more Normal Operating Seasons equal to the actual time lost, except as limited by paragraph (b) in this Subsection.

To qualify for such adjustment, Purchaser shall give written notice of the lost time not later than 30 days after end of Normal Operating Season in which time was lost and at least 10 days before Termination Date. Contracting Officer shall make prompt written acknowledgment of such notice, indicating concurrence with the number of days in the notice or the number of days Forest Service considers as qualifying for the adjustment. Lost portions of days shall be disregarded in computing time lost. The three circumstances qualifying for a Contract Term Adjustment are:

(a) Purchaser experiences delay in starting scheduled operations or interruptions in active operations, either of which stops removal of Included Timber from Sale Area through curtailment in felling and bucking, yarding, skidding and loading, hauling, or road construction, as scheduled under BT6.31, for 10 or more consecutive days during a Normal Operating Season due to causes beyond Purchaser's control, including, but not limited to, acts of God, acts of the public enemy, acts of Government, labor disputes, fires, insurrections, or floods.

(b) Causes described in paragraph (a) substantially affect the disposition or processing of Included Timber during Normal Operating Season through their effects on primary timber processing facilities, with a resulting delay

of 60 days or more in use of such facilities. In such event, Contract Term Adjustment shall not extend for more than 12 consecutive months.

(c) Purchaser:

(i) Accepts Forest Service written request to interrupt or delay operations for any purpose other than suspension under BT4.4 or BT9.3 or

(ii) Suffers an interruption or delay of Purchaser's Operations affecting skidding, yarding, and loading because of fire emergency closure ordered by Forest Service (or another agency in its behalf), and the total of such lost time is 10 or more days during any Normal Operating Season.

If AT7 shows dates for scheduled rate redeterminations that are later than the beginning date of interruption or delay and Termination Date is eligible for adjustment, as described in this Subsection, prior to said dates, the rate redetermination shall be made as originally scheduled. If redetermined rates, plus Bid Premium Rates, are higher than rates in effect immediately prior to the rate redetermination date, the date on which the redetermined rates shall become effective shall be adjusted by the number of days equal to the days lost prior to said rate redetermination date.

If Termination Date is adjusted, as described in this Subsection, and later extended under BT8.23, the appraisal for the extension shall be made as of the unadjusted Termination Date, but the date on which the new rates become effective, if higher than Current Contract Rates immediately prior to Termination Date, shall be the adjusted Termination Date.

**BT8.211 Delay in Reconstruction of Processing Facilities.** Notwithstanding the 12-month limitation in BT8.21, if Purchaser demonstrates a diligent effort has been made to replace primary timber processing facilities and that delays in doing so have been beyond Purchaser's control, Contracting Officer may authorize Contract Term Adjustment up to a total of 24 months.

**BT8.212 Market-Related Contract Term Addition.** The term of this contract may be adjusted when a drastic reduction in wood product prices has occurred in accordance with 36 CFR 223.52. The Producer Price Index used to determine when a drastic reduction in price has occurred is stated in AT23. Purchaser will be notified whenever the Chief determines that a drastic reduction in wood product prices has occurred. If the drastic reduction criteria specified in 36 CFR 223.52 are met for 2 consecutive calendar quarters, after contract award date, Contracting Officer will add 1 year to the contract term, upon Purchaser's written request. For each additional consecutive quarter such a drastic reduction occurs, Contracting Officer will, upon written request, add an additional 3 months to the term during Normal Operating Season. Contracting Officer must receive Purchaser's written request for a market-related contract term addition before the expiration of this contract.

The total amount of contract term addition is limited to the lesser of twice the length of the original contract or 3 years. The revised contract term may not exceed 10 years as a result of market-related contract term addition.

Additional contract time may not be granted for those portions of the contract that have a required completion date or for those portions of the contract where Contracting Officer determines that the timber is in need of urgent removal or that timber deterioration or resource damage will result from delay.

When a contract is lengthened as a result of market-related contract term addition, any subsequent periodic payment date shall be delayed 1 month for each month added to the contract's term.

**BT8.213 Delay of Award.** If an appeal or lawsuit is filed challenging the decision to award this contract or upon determination by the Regional Forester that conditions existing on this timber sale are the same as, or nearly the same as, conditions existing on other timber sale(s) in appeal or litigation, Contracting Officer may delay award or reject all bids. If delay in award is for 30 days or more during Normal Operating Season after bid opening, Contracting Officer shall, upon award, adjust the contract term to include additional calendar days in one or more Normal Operating Seasons equal to the actual time award is delayed.

**BT8.22 Termination for Catastrophe.** In event of Catastrophic Damage, this contract shall be either modified under BT8.33, following rate redetermination under BT3.33, or terminated under this Subsection.

**BT8.221 Termination by Purchaser.** This contract shall be terminated, upon election and written notice by Purchaser, if Catastrophic Damage rate redetermination under BT3.33 shows that the appraised weighted average Indicated Advertised Rate of all Included Timber remaining immediately prior to the catastrophe has been reduced through Catastrophic Damage by an amount equal to or more than the weighted average Current Contract Rate.

"Indicated Advertised Rates" are Forest Service estimates of fair market value of the timber.

**BT8.222 Termination by Forest Service.** This contract shall be terminated by written notice from Forest Service, if there is Catastrophic Damage and Purchaser does not agree under BT8.33 to one or a combination of the following within 30 days of receipt from Contracting Officer of contract modifications proposed to permit the harvest of the catastrophe-affected timber in areas outlined under BT8.33:

- (a) To include Catastrophically-Damaged undesigned timber that normally would be salvaged and cannot reasonably be logged separately from Included Timber,
- (b) To permit salvage operations by others, or
- (c) To eliminate areas of damaged or devalued timber from Sale Area.

**BT8.23 Contract Term Extension.** "Contract Term Extension" means an extension of the term of this contract, at the request of Purchaser, other than Contract Term Adjustment under BT8.21 or contract term addition under BT8.212. This Subsection does not obligate Contracting Officer to grant Contract Term Extension.

When such extension is made, Forest Service shall make an appraisal using standard Forest Service methods and appraisal data in effect 45 days prior to the origi-

nal Termination Date. Bid Premium Rates shall be added to such appraised rates to establish Flat Rates or Tentative Rates for the extension period. In event rates so established would develop Current Contract Value immediately prior to such an extension that is less than Current Contract Value at that time, Flat Rates and Tentative Rates in effect immediately prior to extension shall be retained for the extension period.

The cost of unconstructed Specified Roads and facilities shall be calculated, by applying current costs to original quantities used, to establish amounts by construction phases shown in the Schedule of Items. However, except for agreed changes in planned construction, the appraised construction cost shall not be increased by more than the increase in Current Contract Value.

In consideration for granting an extension, Purchaser shall pay the Government for Purchaser's failure to cut and remove timber meeting Utilization Standards prior to Contract Term Extension, an amount that shall be the total of the costs to the Government resulting from the delay in harvest of Included Timber. Such costs will be determined by Forest Service and shall include, but not be limited to, the following:

(a) Interest at the Current Value of Funds Rate established by the Secretary of the Treasury, on Current Contract Value of timber remaining on Sale Area, less the credit balance of any deposit made pursuant to BT4.223, as of the original Termination Date, or as adjusted pursuant to BT8.21 or BT8.212, until the midpoint of the extension period;

(b) Increased costs of regeneration, including nursery stock loss, carryover, or replacement costs; and

(c) Costs of remarking timber on Sale Area or reestablishing cutting unit boundaries.

**BT8.231 Conditions for Contract Term Extension.** Contracting Officer may grant Purchaser's written request for Contract Term Extension, if Purchaser has met all of the following conditions at time of Purchaser's request:

(a) At least 75 percent of estimated quantity in AT2 has been cut and removed from Sale Area.

(b) Specified Roads needed by Purchaser for removal of all Included Timber, in accordance with the approved Plan of Operations submitted pursuant to BT6.311, were constructed and accepted by Forest Service prior to the applicable road completion date shown in CT5.13.

(c) Purchaser's Operations to date have been in reasonable compliance with contract terms and the approved Plan of Operations under BT6.311.

(d) All contractual requirements have been met by Purchaser and accepted by Forest Service on area cut over at time of Purchaser's request, except for areas where logging is in progress at time of Purchaser's request. Purchaser's burning of current slash or seeding or planting for erosion control may be temporarily waived, if weather or other considerations make such work impractical.

(e) Any payment required under BT4.223 has been made.

Contract Term Extension shall not become effective, unless payments required by BT8.23 have been paid and the initial Extension Deposit required by BT4.227 has been made by the effective date of any extension.

**BT8.24 Termination.** The Chief, Forest Service, by written notice, may terminate this contract, in whole or in part:

(a) To comply with a court order, regardless of whether this timber sale is named in such an order, upon determination that the order would be applicable to the conditions existing on this timber sale or

(b) Upon a determination by the Chief that the continuation of all or part of this contract would:

(i) Cause serious environmental degradation or resource damage;

(ii) Be significantly inconsistent with land and resource management plans adopted or revised in accordance with Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended;

(iii) Cause serious damage to cultural resources pursuant to BT6.24; or

(iv) Adversely affect species listed as threatened or endangered under the Endangered Species Act, 16 USC 1531, *et seq.*, or a sensitive species identified by the Regional Forester.

Compensation for termination under this Subsection shall be calculated pursuant to BT9.51, except compensation for termination under paragraph (a) shall be calculated pursuant to BT9.52 and compensation for termination under paragraph (b)(iv) shall be calculated pursuant to BT9.53.

**BT8.3 Contract Modification.** The conditions of this timber sale are completely set forth in this contract. This contract can be modified only by written agreement of the parties, except as provided under BT8.31.

Except as provided in BT8.24, contract modifications, redeterminations of rates, and termination shall be in writing and may be made on behalf of Forest Service only by Contracting Officer.

(a) By agreement, and with compensating adjustments where appropriate, this contract shall be modified to provide for:

(i) The exercise of any authority hereafter granted by law or regulation of the Secretary of Agriculture, if such authority is then generally being applied to Forest Service timber sale contracts and

(ii) Any other contractual provision then in general use by Forest Service.

(b) Contracting Officer may make modifications in Timber Specifications in BT2.0, Transportation Facilities in BT5.0, or Operations in BT6.0, or in related Special Provisions if, and to the extent that, such changes are reasonably necessary to make the contract consistent with guidelines and standards developed to implement Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, and with land and resource management plans developed or revised thereunder. Resulting changes in the value of remaining Included Timber shall be reflected in a rate redetermina-

tion conducted in accordance with BT3.32. Rates so determined shall apply to timber Released for Cutting after the effective date of the modification.

(c) This contract may be modified to revise AT9 and AT10 to add Specified Roads not listed in AT9, as necessary to facilitate reconstruction of existing Forest Service roads or accepted Specified Roads, including appurtenances thereto. In accordance with BT5.2, Contracting Officer shall make revisions to AT9 and adjustments to Current Contract Rates. Reductions in Current Contract Value shall be limited to \$100,000 or less. Calculate cost adjustments for increases in Specified Road construction cost for added roads in accordance with BT5.251, BT5.252, and BT5.253. Additions will not be made when reconstruction is made necessary by Purchaser's negligence. Roads or road segments to be added must meet the following conditions:

(i) The required work must be on an actual haul route used by, or scheduled for use by, Purchaser;

(ii) The required work must be the result of unforeseen cause, such as slides, slumps, washouts, subgrade conditions, or similar causes; and

(iii) The work must be necessary for economic, safe, and practical use of the road by Purchaser.

**BT8.31 Modification Upon Rate Redetermination.** In scheduled rate redeterminations, Contracting Officer may make modifications in minimum specifications for trees or products in AT2, road maintenance requirements or deposits in CT5.31 or CT5.32, logging methods in CT6.4, slash disposal in CT6.7, and fire precautionary measures in CT7.2 if, and to the extent that, such changes are reasonably necessary to protect the interest of the United States. Such modifications shall be limited to requirements generally being made in Forest Service timber sale contracts in the Region at the time of rate redetermination and with which Purchaser can reasonably comply. Such changes shall be reflected in the rate redetermination, but changes affecting rates shall not be implemented until the redetermined rates become effective.

**BT8.32 Changed Conditions.** When it is agreed that the completion of certain work or other requirements hereunder would no longer serve the purpose intended because of substantial change in the physical conditions of Sale Area or Included Timber since the date of this contract, said requirements shall be waived in writing. The estimated cost of such waived work or other requirement shall be charged to the Timber Sale Account.

**BT8.33 Modification for Catastrophe.** In event of Catastrophic Damage, Forest Service, in consultation with Purchaser, shall outline on Sale Area Map:

(a) Any areas of catastrophe-affected live and dead timber meeting Utilization Standards and having undesignated timber so situated that it should be logged with the designated timber;

(b) If needed, any such areas where the damaged undesignated timber can reasonably be logged separately; and

(c) Areas of affected or unaffected timber that by agreement are to be eliminated from Sale Area.

By agreement, Purchaser and Forest Service shall locate and post the boundaries of all such areas as needed.

In such event, this contract shall be modified to include rates redetermined under BT3.33 and other related revisions as agreed hereunder, such as revision of Operating Schedule to ensure prompt removal of affected timber when necessary to avoid further loss and acceptance of Contract Term Extension period, if needed.

**BT8.4 Performance by Other Than Purchaser.** The acquisition or assumption by another party, under an agreement with Purchaser, of any right or obligation of Purchaser under this contract shall be ineffective as to Forest Service, until Forest Service has been notified of such agreement and Contracting Officer has given written approval. In no case shall such recognition or approval:

(a) Operate to relieve Purchaser of the responsibilities or liabilities Purchaser has assumed hereunder or

(b) Be given unless such other party:

(i) Is acceptable to Forest Service as a purchaser of timber and assumes in writing all of the obligations to Forest Service under the terms of this contract as to the uncompleted portion thereof or

(ii) Acquires the rights in trust as security and subject to such conditions as may be necessary for the protection of the public interests.

**BT8.5 Sale of Other Materials.** Forest Service reserves the right to sell from Sale Area during the period of this contract any materials or products not subject to its terms, but shall not permit removal, possession, or use thereof that will materially interfere with Purchaser's Operations. Purchaser shall not be obligated to do any work made necessary by the action of others.

**BT8.6 Provisions Required by Statute.**

**BT8.61 Covenant Against Contingent Fees.**

Purchaser warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Purchaser for the purpose of securing business. For breach or violation of this warranty, Forest Service shall have the right to annul this contract without liability or to require Purchaser to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**BT8.62 Officials Not to Benefit.** No member of Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, unless it is made with a corporation for its general benefit (18 USC 431, 433).

**BT8.63 Nondiscrimination in Employment.** If the total value of this contract is in excess of \$10,000, Purchaser agrees during its performance as follows:

(a) Purchaser will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Purchaser will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, with-

out regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Purchaser agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Forest Service setting forth the provisions of this Subsection.

(b) Purchaser will, in all solicitations or advertisements for employees placed by or on behalf of Purchaser, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Purchaser will send to each labor union or representative of workers with which Purchaser has a collective bargaining agreement or other contract or understanding, a notice to be provided by Forest Service, advising the said labor union or worker's representative of Purchaser's commitments under this Subsection, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Purchaser shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967 and Executive Order No. 12086 of October 5, 1978, and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Purchaser will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records, and accounts by Forest Service and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In event of Purchaser's noncompliance with this Subsection or with any of such rules, regulations, or orders, this contract may be terminated or suspended, in whole or in part, and Purchaser may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked, as provided in said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) Purchaser will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Subcontractor or vendor. Purchaser will take such action with respect to any subcontract or purchase order as Forest Service may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Purchaser becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by Forest

Service, Purchaser may request the United States to enter into such litigation to protect the interests of the United States.

Nothing in this contract shall be construed to require or permit discrimination based on sex.

**BT8.64 Debarment and Suspension Certification.** Pursuant to 7 CFR 3017.510, Purchaser shall obtain certifications from its Subcontractors regarding debarment, suspension, ineligibility, and voluntary exclusion, including additional Subcontractors obtained after award of this contract. "Subcontractors" are participants in lower tier covered transactions.

Purchaser may rely upon a certification of a prospective Subcontractor that it is not proposed for debarment under 48 CFR 9.4, debarred, suspended, ineligible, or voluntarily excluded from participating in covered transactions or timber sales, unless Purchaser knows that the certification is erroneous.

Purchaser shall keep the certifications of its Subcontractors on file until timber sale Termination Date and any extensions thereof, and will provide a copy at the written request of Contracting Officer. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Subsection. The knowledge and information of Purchaser is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If Purchaser knowingly enters into a timber sale transaction with a person who is proposed for debarment under 48 CFR 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in covered transactions or timber sales, in addition to other remedies available to the Government, Forest Service may pursue available remedies, including suspension and/or debarment.

The Subcontractor for a timber sale shall complete a "Subcontractor Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion." An example of this certification is shown following the instructions for page 101 of this contract.

## **BT9.0—PERFORMANCE AND SETTLEMENT**

**BT9.1 Performance Bond.** As a further guarantee of the faithful performance of the provisions of this contract, Purchaser delivers herewith and agrees to maintain a surety bond in the dollar amount stated in AT19, unless the amount is adjusted as provided in BT9.11. In lieu of surety bond, Purchaser may deposit into a Federal Depository, as directed by Forest Service under BT4.22, and maintain therein, cash in the dollar amount stated in AT19 or negotiable securities of the United States having market value at time of deposit of not less than the dollar amount stated in AT19.

Any adjustment or extension of time for completion of this contract beyond 1 year may be granted only with the consent of surety on said bond or delivery of a new bond. Should the sureties on the bond delivered herewith, or any bond delivered hereafter in connection with this con-

tract, become unsatisfactory to Forest Service, Purchaser shall, within 30 days of receipt of demand, furnish a new bond with surety satisfactory to Forest Service.

**BT9.11 Bond Reduction.** Upon Purchaser's written request, Contracting Officer shall redetermine the amount of Purchaser's performance bond to an amount not less than Purchaser's remaining obligations, including the value of the Included Timber remaining on the Sale Area, plus the estimated cost of uncompleted work required of Purchaser and any unpaid billings due on the timber sale. Contracting Officer shall provide written notice of the redetermined amount to Purchaser and to Purchaser's surety. Similarly, Contracting Officer shall report to Purchaser in writing the amount of deposited cash or deposited securities required thereafter, if such deposits exist in lieu of a surety bond.

As soon as security for the performance of this contract or the settlement of Claims incident thereto is no longer necessary, appropriate notice shall be given to surety or deposits that may have been made in lieu of surety bond shall be returned to Purchaser, subject to the conditions in BT9.5.

**BT9.12 Letters of Credit.** Notwithstanding the provisions of BT9.1, approved letters of credit may be used in lieu of a surety bond for performance bond purposes. Such letters of credit shall be subject to approval by Contracting Officer.

**BT9.2 Disputes.** This contract is subject to the Contract Disputes Act of 1978 (41 USC 601, *et seq.*). Except as provided in the Contract Disputes Act of 1978, all disputes arising under or relating to this contract shall be resolved in accordance with this Section.

As used herein, "Claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a Claim. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a Claim. A Claim by Purchaser shall be made in writing and submitted to Contracting Officer for decision. A Claim by the Government against Purchaser shall be subject to a decision by Contracting Officer.

For Purchaser Claims of more than \$100,000, Purchaser shall submit with the Claim a certification that the Claim is made in good faith; the supporting data are accurate and complete to the best of Purchaser's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which Purchaser believes the Government is liable. Purchaser, if an individual, shall execute the certification. When Purchaser is not an individual, the certification shall be executed by a senior company official in charge at Purchaser's plant or location involved or by an officer or general partner of Purchaser having overall responsibility for the conduct of Purchaser's affairs.

For Purchaser Claims of \$100,000 or less, Contracting Officer must render a decision within 60 days. For

Purchaser Claims in excess of \$100,000, Contracting Officer must decide the Claim within 60 days or notify Purchaser of the date when the decision will be made.

Contracting Officer's decision shall be final unless Purchaser appeals or files a suit.

The authority of Contracting Officer does not extend to Claims or disputes that by statute or regulation other agencies are expressly authorized to decide.

Interest, at the Prompt Payment Rate established by the Secretary of the Treasury, on the amount found due on Purchaser's Claim shall be paid from the date the Claim is received by Contracting Officer until the date of the payment.

Except as the parties may otherwise agree, pending final resolution of a Claim of Purchaser arising under the contract, Purchaser shall proceed diligently with the performance of the contract in accordance with Contracting Officer's decision.

**BT9.21 Submission of Claim.** Purchaser Claims under this contract shall be submitted in writing to Contracting Officer. Date of receipt by Contracting Officer shall be considered as the beginning date for determining any interest due on Claims.

Failure by Purchaser to submit a Claim within established time limits shall relinquish the United States from any and all obligations whatsoever arising under said contract or portions thereof. Purchaser shall file such Claim within the following time limits:

(a) When Purchaser constructs Specified Road, Purchaser must file any Claim not later than 60 days after receipt of Forest Service written notification of acceptance;

(b) When Forest Service constructs Specified Road, Purchaser must file any Claim not later than 60 days after receipt of Forest Service written notification authorizing use of road;

(c) For Payment Units, Purchaser must file any Claim not later than 60 days after receipt of Forest Service written notification that Payment Unit has been accepted; and

(d) In all other cases, Purchaser must file any Claim not later than 60 days after receipt of Contracting Officer written notification that timber sale is closed.

**BT9.22 Contract Documents.** All contract documents are intended to be consistent with each other. In case of discrepancy, the following is the order of precedence:

(a) Special Provisions (CT)  
(b) Sale Area Map  
(c) Specific Conditions (AT) and Schedule of Items  
(d) Standard Provisions (BT)  
(e) Special project specifications  
(f) Plans, such as slash, erosion control, dust abatement, etc.

(g) Agreements between Purchaser and Forest Service, as authorized under the contract

(h) Drawings:

(i) Figured dimensions over scaled dimensions  
(ii) Large scale Drawings over small scale Drawings

(i) Standard specifications  
(j) Lists and/or tables in Drawings over any conflicting notations on Drawings  
(k) Shop Drawings

**BT9.3 Breach.** In event Purchaser breaches any of the material provisions of this contract, Forest Service shall give Purchaser notice of such breach and, allowing reasonable time for remedy of such breach and of Forest Service's election to suspend, may give notice to suspend all or any part of Purchaser's Operations. Such notice of breach and notice to suspend Purchaser's Operations shall be written, except oral notices may be given if such breach constitutes an immediate threat to human life or a threat of immediate and irreparable damage to National Forest resources. Notwithstanding Section BT6.1, such oral suspension notice may be given to Purchaser's work supervisor or, in work supervisor's absence, to those performing the operation. An oral suspension notice shall be promptly followed by telephone notice and a written explanation from Forest Service to Purchaser.

Immediately upon oral or written suspension, Forest Service representative shall notify Contracting Officer of the suspension and related circumstances. Contracting Officer shall promptly review the suspension to determine if the suspension should be continued or lifted. Such suspension shall be lifted as early as conditions permit.

Upon receipt of oral or written notice of such breach, Purchaser shall remedy the breach as follows:

(a) If remedying such breach requires on-the-ground action by Purchaser, Purchaser shall have 30 practicable operating days during Normal Operating Season to do so, except under emergency conditions when action should not be delayed to prevent major damage or

(b) If such breach does not require on-the-ground action by Purchaser, such breach shall be remedied within 30 days.

**BT9.31 Termination for Breach.** Contracting Officer, with the concurrence of the Regional Forester, may terminate this contract for breach in the event Purchaser: Is convicted for violation of criminal statutes, civil standards, or any other offense indicating a lack of business integrity or honesty that seriously and directly affects the responsibility of Purchaser; including, but not limited to:

(i) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property, any of which occurred in connection with obtaining, attempting to obtain, selling, trading, or processing public timber;

(ii) Fraud, criminal offenses, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain, or performing a public contract or subcontract; or

(iii) Threatening, resisting, intimidating, or interfering with Forest Officers engaged in, or on account of, the performance of their official duties involving the protection, improvement, or administration of National Forest lands;

(b) Is convicted for a violation of criminal statutes or civil standards, orders, permits, or other regulations for

environmental protection issued by a Federal agency, State agency, or political subdivision thereof in the conduct of operations hereunder on National Forest lands, pursuant to BT6.01;

(c) Has engaged in a pattern of activity that demonstrates flagrant disregard for the terms of this contract, such as, but not limited to, repeated suspensions for breach pursuant to BT9.3, causing undesignated timber meeting Utilization Standards to be unnecessarily damaged or negligently or willfully cut, or causing other serious environmental degradation or resource damage;

(d) Fails to comply with contract provisions related to nondiscrimination in employment; or

(e) Fails to remedy a breach of contract within time limits stated in BT9.3.

Damages due the United States for termination under this Subsection shall be determined pursuant to BT9.4.

**BT9.4 Damages for Failure to Cut or Termination for Breach.** In event of (a) Purchaser's failure to cut designated timber on portions of Sale Area by Termination Date or (b) termination for breach under BT9.31, Forest Service shall appraise remaining Included Timber, unless termination is under BT8.22 or BT8.24. Such appraisal shall be made with the standard Forest Service method in use at time of termination.

Damages due the United States for Purchaser's failure to cut and remove Included Timber meeting Utilization Standards shall be the amount by which Current Contract Value, plus costs described in this Section, less any transferred-in purchaser credit remaining at time of termination, exceeds the resale value at new Bid Rates. If there is no resale, damages due shall be determined by subtracting the value established by said appraisal from the difference between Current Contract Value and the estimated expenditures for Specified Road construction multiplied by the ratio of remaining quantity to advertised quantity, plus any of the following applicable costs:

(a) The cost of resale or reoffering.

(b) Any increase in Specified Road construction cost for unconstructed Specified Road facilities that are needed to harvest the remaining uncut quantity. Such increases are limited to costs for constructing the road to the same standard and specifications as required by this contract.

(c) If Purchaser has failed to cut individual trees in the portions of Sale Area cut over and there is no resale of such individual trees, Purchaser shall pay Forest Service for cost of felling and removal or otherwise eliminating such uncut trees, in addition to payment of other damages described in this Section, except for occasional trees not cut for reasons stated in BT6.4.

(d) The Government's loss caused by the delay in receipt of stumpage payments. Such loss will be measured by interest at the Current Value of Funds Rate established by the Secretary of the Treasury, on the unpaid contract value at Termination Date. Interest will be charged for the total number of months, or portions thereof, from Termination Date until midpoint of the contract resale period, less any time in excess of 1 year needed to make the resale.

(e) Any increase in reforestation costs, including site preparation, seeding, and planting caused by Purchaser's failure to harvest Included Timber by Termination Date.

**BT9.41 Failure to Execute Contract.** Purchaser's failure to execute and return this contract, or to provide the performance bond, within 30 days of the date of Contracting Officer's letter of award constitutes a breach of the contract. Purchaser's failure to correct the breach within any additional time set by Contracting Officer constitutes a repudiation and breach of the contract and terminates the contract without further action by Contracting Officer. Damages due the United States shall be determined in the following manner:

(a) The costs, as described in this Subsection, incurred by Forest Service in contacting the other qualified bidders regarding accepting the award of the contract at the high bidder's repudiated rate or

(b) If another qualified bidder does not accept award of the contract at the high bidder's repudiated rate:

(i) If the repudiated contract is reoffered within 6 months of the date of repudiation, damages shall be the difference between the total resale bid value and the total value of Purchaser's repudiated bid, plus costs described in this Subsection or

(ii) If there are no responsive bids on the reoffered contract, damages shall be the difference between the reoffered appraised value and the total value of Purchaser's repudiated bid, plus costs described in this Subsection or

(iii) If the repudiated contract will not be reoffered or the reoffer is not made within 6 months of Purchaser's repudiation, damages shall be the difference between the appraised value of this contract as of the date of Purchaser's repudiation and the total value of Purchaser's repudiated bid, plus the costs described in this Subsection.

The costs to be included in damages are the costs the Government incurs in making the reoffer, including, but not limited to, salary costs, document preparation and duplication costs, mailing costs, and timber sale advertisement costs.

Damages will also include interest at the Current Value of Funds Rate established by the Secretary of the Treasury, on the difference between Purchaser's retained bid guarantee and the downpayment amount pursuant to BT4.221 and other deposits required at award. Interest will be calculated from the date of Purchaser's repudiation to the date of award of the reoffered contract or to the date a determination is made not to reoffer the repudiated contract or for 6 months, whichever comes first.

Purchaser and Forest Service agree that Purchaser's bid guarantee shall be retained by Forest Service and applied toward damages due the United States for Purchaser's failure to execute this contract.

**BT9.5 Settlement.** If obligations of Purchaser have not been fully discharged by Termination Date, any money advanced or deposited hereunder shall be retained and applied toward unfulfilled obligations of Purchaser without prejudice to any other rights or remedies of Forest Service. Such funds may be treated as coopera-

tive deposits under BT4.228 for uncompleted work 30 days after receipt of written notice from Forest Service to Purchaser of work to be done and Purchaser's failure to deny the obligation or to do the work.

**BT9.51 Settlement for Termination.** If Forest Service terminates this contract under BT8.24, Purchaser agrees that the liability of the United States shall be limited to the sum of:

(a) The estimated expenditures for Specified Road construction multiplied by the ratio of remaining volume to advertised volume;

(b) The estimated expenditures for felling, bucking, lopping, skidding, and decking any products so processed, but not removed from Sale Area because of the termination action;

(c) Out-of-Pocket Expenses involved in acquiring and holding the contract, such as maintaining performance bonds and cash deposits; and

(d) The difference between Current Contract Rates for the remaining uncut volume and the rates paid for comparable timber on the same National Forest during the preceding 6-month period multiplied by the remaining uncut volume.

Comparable timber is timber of similar size and quality with similar topography and access. Base cost estimates for items listed in (b) upon Forest Service appraisal methods in use on the date contract is terminated.

**BT9.52 Settlement for Administrative Appeal or Litigation.** Forest Service may modify or terminate this contract in whole or in part as a result of an administrative appeal or litigation of the decision to sell timber included in this contract.

In the event of modification or partial termination, changes to the contract shall be limited to those determined by Contracting Officer to be necessary for correction of the deficiencies raised by the appeal or lawsuit. Changes to the contract shall be limited to requirements with which Purchaser can reasonably comply.

In the event that this contract is terminated, in whole or in part, under this Subsection, Purchaser agrees that the liability of the United States shall be limited to the sum of:

(a) The estimated expenditures for Specified Road construction multiplied by the ratio of remaining volume to advertised volume and

(b) The estimated expenditures for felling, bucking, lopping, skidding, and decking any products so processed, but not removed from Sale Area because of termination action.

Base these cost estimates upon Forest Service appraisal methods in use on the date contract is modified or terminated.

**BT9.53 Settlement for Environmental Termination.** In the event of termination of this contract, in whole or in part, by the Chief, based upon the Chief's determination that continuation of all or part of this contract would adversely affect a species listed as threatened or endangered under the Endangered Species Act, 16 USC 1531, *et seq.*, or a sensitive species identified by the Regional Forester, Purchaser agrees that the liability of the United States shall be limited to the express remedies contained within this Subsection.

In the event of termination or partial termination, Purchaser agrees that its sole and exclusive remedy shall be the sum of:

(a) The estimated expenditures for Specified Road construction multiplied by the ratio of remaining volume to advertised volume;

(b) The estimated expenditures for felling, bucking, lopping, skidding, and decking any products so processed, but not removed from Sale Area because of termination action; and

(c) The Out-of-Pocket Expenses involved in acquiring and holding this contract, such as maintaining performance bonds and cash deposits.

Base cost estimates for items listed in (b) upon Forest Service appraisal methods in use on the date contract is terminated. Out-of-Pocket Expenses in (c) do not include lost profits, replacement cost of timber, attorney's fees, or any other anticipatory losses suffered by Purchaser. Purchaser agrees to provide receipts or other documentation to the Contracting Officer that clearly identify and verify actual expenditures.

**BT9.6 Contract Closure.** Contracting Officer shall give appropriate written notice to Purchaser when Purchaser has complied with the terms of this contract. Purchaser shall be paid refunds due from the Timber Sale Account under BT4.25 and excess cooperative deposits under BT4.228.

## DIVISION CT

### Special Provisions

In accordance with AT25, the Sections, Subsections, and Items therein listed are attached and made a part hereof. The material is indexed by the numbering system used in Division BT. The numbers after the CT (that identifies material in this Division) indicates the Part, Section, Subsection, or Item of Division BT that is being supplemented or modified by each particular provision included in this Division.